

The Concept of Ownership in the Formation of the Islamic City

Thesis submitted for the degree of
Doctor of Philosophy in
Architecture

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Declaration

This thesis is my original work and has been composed solely by myself

Nabil El-Kassar

To my Beloved Wife and Children

To my Beloved Wife and Children

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Abstract of Thesis Form

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Abstract

This research concentrates mainly on the inhabited tissue in the urban fabric of the traditional Islamic Cities. It researches mainly the design and construction of the housing plots and places in between like yards, courtyards, streets, and markets known collectively as *Al-Amer*. It explores the hypothesis that this was built mainly by the decisions of the common people and enabled by principle of ownership. The objective is to complement previous studies that have tended to focus more on the great buildings of Islamic society such as Mosques, mausolea, madrasas, and khans erected by famous caliphs and sultans to memorialise their reigns and places in history. In contrast to this approach, this study examines the general urban infrastructure and architecture utilised by the common people in their everyday lives.

The research is divided into four parts. The first centres on the Islamic City - its beginning, informal development, and general planning. The entire process of urbanisation or city building is examined with emphasis on the role of community decision-making and leadership formation. Thus, the *rules* of construction and informal urban design start to emerge as the process is explored in some depth.

The second part is about land ownership as a major factor in the formation of the urban fabric of the city known as *Al-Amer*. This covers such aspects as the methods utilised for awarding of building plots to individuals to carry out their houses through "vitalisation" known as *Ihya'a* and direct allocation known as *Iqta'a*.

The third part covers the built-up area of the inhabited urban fabric. In this regard it includes an analysis of the houses, markets, shops and other outbuildings and the spaces that separate and connect them. A great variety of interstitial shapes emerge as a direct result of applying principles and interpretations of principles of *Ihya'a*, *Iqta'a*, *Hareem* and *Darar*. These "forces / rules" have traditionally been applied to both residential and non-residential structures as well as rights-of-way, dimensions of streets, sight lines, house designs, *Hareem*, *Darar*, and other significant concerns of urban Muslims. In a sense it creates an Urban policy with guidelines accumulated through time forming the conventions which led finally to making micro plans through a community process in programming and developing the housing model giving at the end the unique coherent structure of the traditional medieval Islamic city.

The fourth part covers some other aspects of property ownership as they relate to the dynamic growth, territorial changes and the overall development of the city giving it its rich pattern of shapes and spaces and great visual interest.

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PART ONE

CHAPTER ONE

Introduction to the Research

1.0 Introduction

The historical¹ Islamic City with its traditional architecture and fanciful decoration, domes, vaulting and unusual building types has attracted the attention of numerous scholars and researchers for a very long time. Yet, most studies of an urban analytical nature have neglected the form and construction of the city itself choosing instead to focus on the prominent structures featured in well known architectural history texts. These are the palaces, Mosques, khans, mausoleums, schools, towers and other great buildings built by the renowned Caliphs and Sultans of medieval times. However, these types of buildings really represent the power and prestige of the individuals who had them built rather than the efforts of the common urban people who lived amongst them. Thus, these monuments and memorials existed independently of the great mass of urban tissue that surrounded them the actual city being the tight grouping of houses, markets, shops and neighbourhood Mosques that served to link these more resplendent buildings together. This pattern of a tight urban configuration was repeated over and over throughout the Islamic World with few, if any, exceptions². Zig-zag streets, dead end courts and cul-de-sacs characterised the general organic urban structure.

This constant phenomenon of 'informal' city-building in the Islamic World has remained submerged until now with several urban Islamic scholars referring to it as 'spontaneous'³. They prefer to characterise this development as random, haphazard, aimless and even purposeless,

¹The history of anything is our knowledge of the past of that thing. This may seem like a rather childish definition, but its implications are important in at least two ways. First, it follows that before one can study the history of something, the nature of that something needs to be defined; the subject matter of the domain needs to be identified (Northrop, 1947; Shapere, 1977, 1984). It also follows that many disciplines that are not generally considered to be historic are so in fact, among these the history of life, evolutionary biology, palaeontology, physical anthropology, geology, cosmology, physics, astrophysics and so on. We can think of these as *historical sciences*. More generally, there are even recent arguments that all science is inherently historical (Prigogine and Stengers, 1984). This at least raises the possibility that the study of history, in the sense of the past of anything, can be related to science and can be scientific (Rapoport, 1977).

²For example Safaqs in Morocco and Safaren—Polo in Turkey.

frequently adding that its constructors were irresponsible stewards ignoring the city's formal building codes as their structures transgressed on public rights-of-way, open spaces and other municipal areas. They supported their views by mere observation of the urban fibre itself, claiming that neither the streets nor the houses represented any discernible urban pattern. Most took the position that the organically formed parts of the city lacked municipal identity and showed no evidence that they were ever built as part of a pre-conceived plan.

Urban development wrought from the minds and hands of common people is generally referred to as *vernacular*, a colloquial term that reflects regional architectural identity as emanating from a folk tradition. While the majority of urbanists look upon the greater physical part of Islamic Cities as representative of vernacular forms, others have taken an opposite view, maintaining that the early Islamic Cities in their initial development were pre-planned. As examples, they usually proffer such centres as Baghdad, Cairo, or Koufa and, from evidence reflected in historical traditions, picture them as being laid out along well developed axes of wide perpendicular streets or broad circular schemes with prominent entries at cardinal points. In refining their thoughts they state that these urban centres had clearly defined building sites with planned centres for Mosques, markets and other public areas.

1.1 Focus of the Dissertation

The focus of this dissertation is to delve more deeply into the planning and development of Medieval Islamic Cities in an effort to see if there are established bases for their design or physical arrangement that might explain their traditional form or character. Were these cities built in a total random fashion? Did their builders continually disregard public development codes and ordinances? and so forth. Of course, there is also the possibility that there could have been some development guidelines, but if there were, how were they effected or enforced? Who established them? Who decided where and how urban dwellings should be built? Who decided upon the scale, location, or orientation of roads, streets and other works of public infrastructure? Was it the governor, caliph, or some agent appointed by them? Thus, the general question that this dissertation attempts to answer is *who designed the Islamic City*? The mere exploration of this question might well shed some light on possible community values that architects and city planners have overlooked or lost in generating modern urban design and development schemes.

³ Cahen C. 1970, Xavier De Banhol 1959 and Cresswell, 1982 etc.

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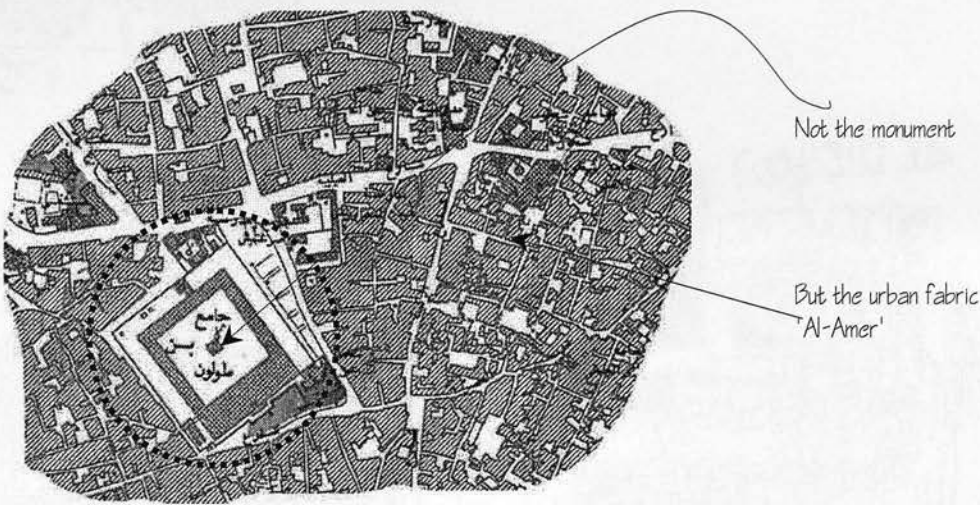
The focus of this dissertation is to delve more deeply into the planning and development of Medieval Islamic Cities in an effort to see if there are established bases for their design or physical arrangement that might explain their traditional form or character. Were these cities built in a total random fashion? Did their builders continually disregard public development codes and ordinances? and so forth. Of course, there is also the possibility that there could have been some development guidelines, but if there were, how were they effected or enforced? Who established them? Who decided where and how urban dwellings should be built? Who decided upon the scale, location, or orientation of roads, streets and other works of public infrastructure? Was it the governor, caliph, or some agent appointed by them? Thus, the general question that this dissertation attempts to answer is *who designed the Islamic City?* The mere exploration of this question might well shed some light on possible community values that architects and city planners have overlooked or lost in generating modern urban design and development schemes.

³Cahen C. 1970, Xavier De Banhol 1959 and Cresswell, 1982 etc.

1.2 The Value of the Research

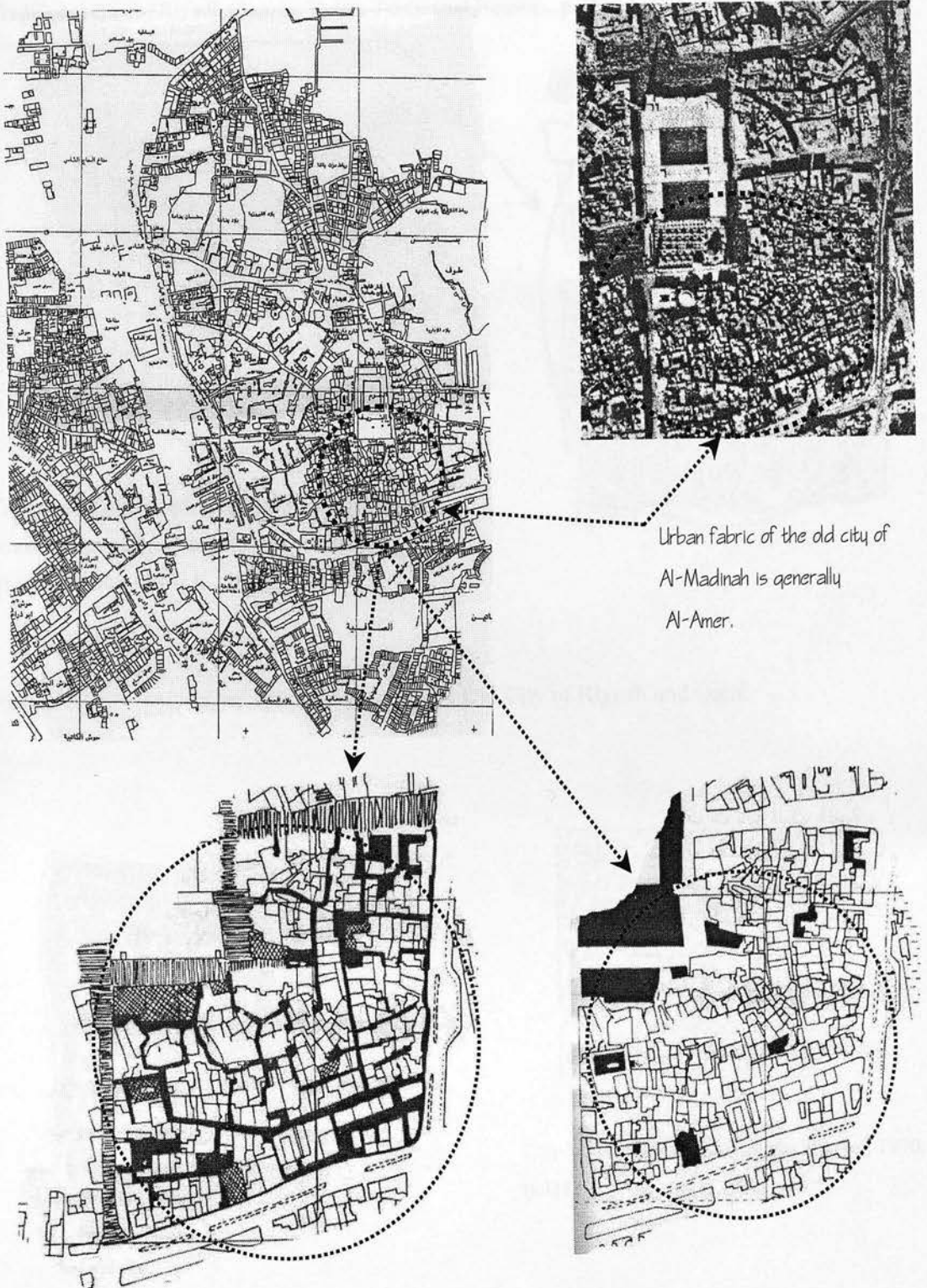
In exploring some of the founding ideas and design principles applied in the planning of early Islamic Cities, this dissertation hopes to provide insights for contemporary planners and architects presently in practice. It takes the approach that should there be some guiding design or development principles, they would likely be contained in the teachings and writings of the Prophet Mohammed ﷺ. Thus, an investigation as to how closely urban development adheres or abstracts from basic Islamic thought might well explain much of what one perceives in a close scrutiny of the city. Since unity is a guiding principle in Islam, a departure from basic Islamic concepts, either literally or spiritually could account for some of the visual chaos evident in many cities today.

The value of this study lies in its focus on the undergirding principles of Islamic urban development (see figure 1.1).



Cairo: the old city (source: Egyptian State of Surveying, 1997).

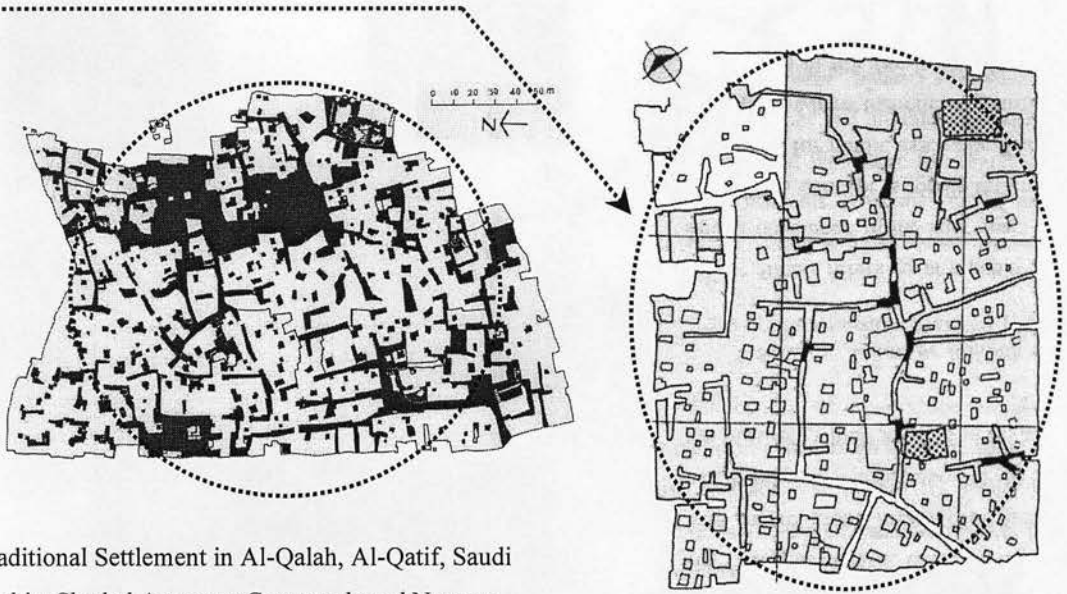
Figure 1.1 Idea of the Research (Source: the Author).



Al-Aghawa'at Area of the Old Part of Al-Madinah
(Source: Pilgrimage Cities, Al-Madinah Al-Munawarah, Office of City Planning, 1986).

Figure 1.2 *Al-Amer* the Residential Area of the Islamic City.

Traditional City of Riyadh (Source: Faden, Traditional Houses...p.315).

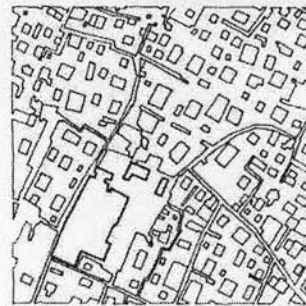


Traditional Settlement in Al-Qalah, Al-Qatif, Saudi Arabia, Shaded Areas are Courtyards and Narrow Streets (Source: Talib, K., 1984, p.84).

Figure 1.3 Concept of *Al-Amer* in the Old City of Riyadh and Qatif.

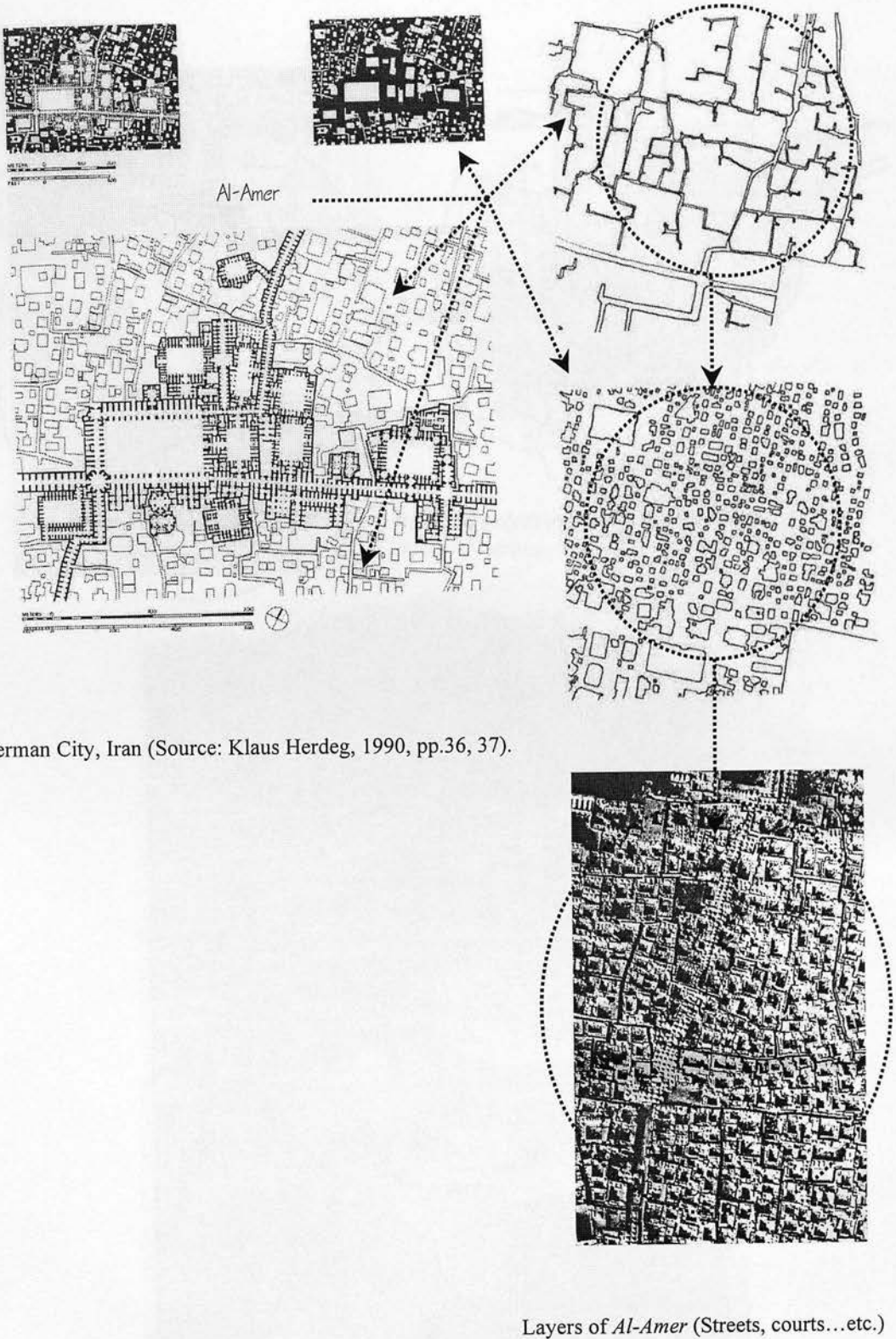


Wadi Hadramawt (Source: Lewcock, R., 1983, p.71)



City of Yazd (Source: Klaus Herdeg, 1990, p.41)

Figure 1.4 The Urban Fabric of Wadi Hadramawt, Yamen and City of Yazd, Iran.



Kerman City, Iran (Source: Klaus Herdeg, 1990, pp.36, 37).

Figure 1.5

The Concept of *Al-Amer* in the Iranian Cities.

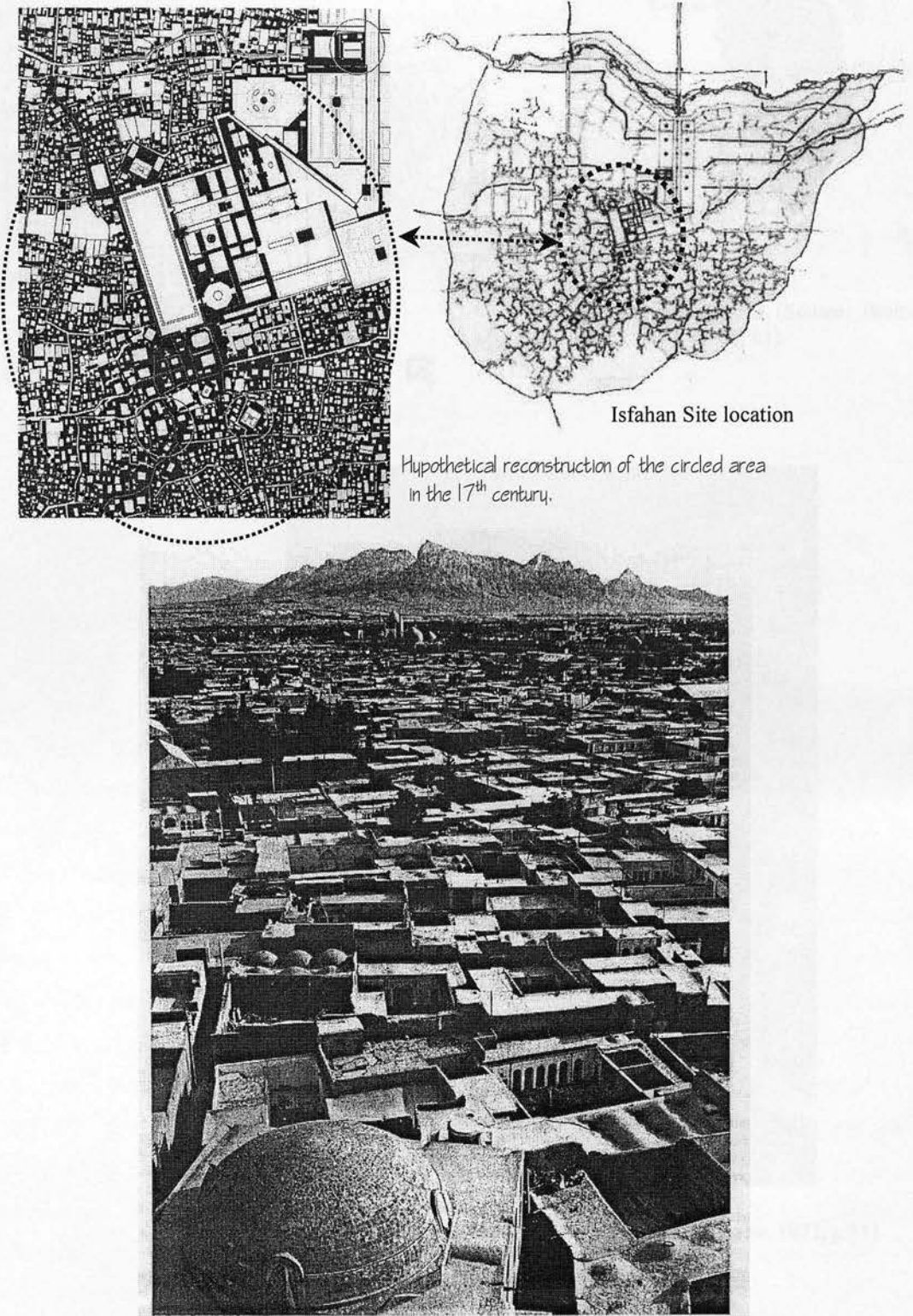
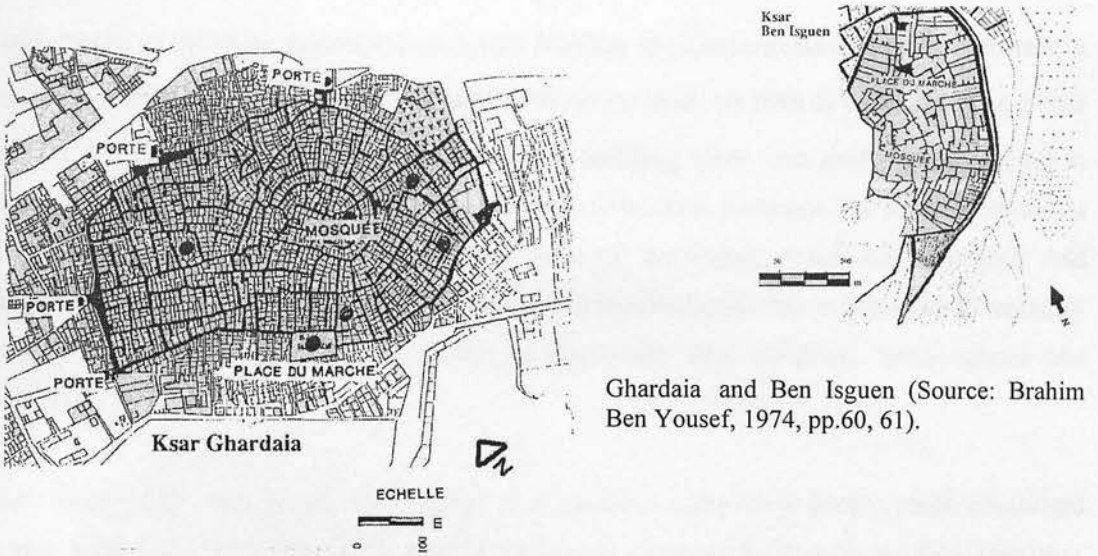
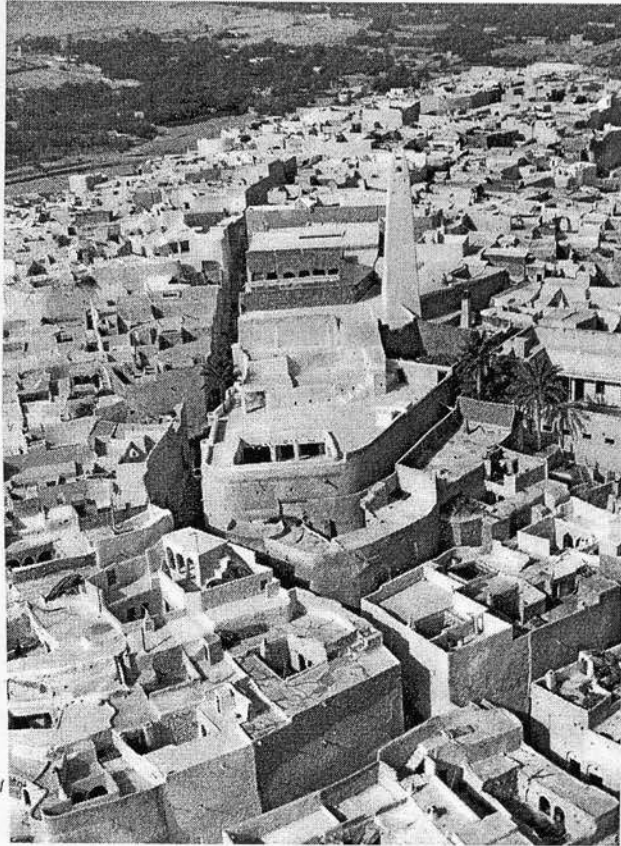


Figure 1.6

Isfahan Spread out in the Same Configuration of *Al-Amer* Like Other Islamic Cities (Source: Klaus Herdeg, 1990, pp.10, 13).



Ghardaia and Ben Isguen (Source: Brahim Ben Yousef, 1974, pp.60, 61).



Aerial View of Ben Isguen (Source: Manuelle Roche, 1973, p.11).

Figure 1.7 Configuration of *Al-Amer* in Algeria.

1.3 Some Discussion of the Problem

Many years of teaching experience on design faculties of prominent schools of Architecture in the Middle East⁴ has indicated a noticeable imbalance in the training of architects. The recent rush to produce “practitioners” to generate new building types and prototype structures in tandem with a burgeoning economy, has created a ubiquitous cityscape that now overshadows and obscures the vibrancy, congruence and spirit of the Islamic community beneath it. And further this philosophical posture to emulate western modernisation has eviscerated the capacity of the common people to create and/or maintain their own buildings, urban spaces and community life.

The Islamic City- the group of buildings and spaces in and around streets, yards, courts and market seats etc., as built and erected by Muslims according to the *Shari’a* and local traditions with available building materials and independent of a central authority, existed for over a thousand years as a self-generating and self-maintained system. This model incorporated great flexibility to counter the adversity of a harsh arid climate and reflected a sound logic to accommodate municipal growth and development.

This ‘logic’, however, was not the logic of one professional, or of one architectural ideology, or one bureau, or even of one lifetime. It was the logic that lay within the activities and agreements of many communities over many centuries. Furthermore, it is this logic that is now lost, for it is only implicit, not explicit in the built environment of today. It depends not singly on physical evidence that any intelligent person may study and interpret, but in the junction and marriage of the physical fabric and the social, cultural and technical circumstances that surrounds and influences it. For architecture does not exist as an activity apart from life in a city. The buildings and the directions of development that architecture fixes are the very fabric of settlement of public and domestic life. Understanding this principle is the crux of this research. It suggests that when people become removed from the creation of architecture, they are separated from any direct contact with urban life or society. In losing this intimate contact with the physical aspects of the city, people also lose their command over its social, cultural and political aspects, as these are well united in the phenomenon of urbanisation. The process, which one now refers to as ‘Westernisation’, has now in fact impaired our scale of civil democracy, ironically the very social system that the West so vigorously promotes in developing countries.

⁴For the past four years the author has been a member of the architecture faculty at Kuwait University. Prior to that he spent ten years teaching at the University of Zagazig in Cairo and seven years with the College of Architecture at King Saud University in Riyadh, Saudi Arabia.

Many cities are not public, in the true sense that the people who live there own neither the stuff nor the forms from which it has been built. They inhabit it but have no ownership of it. With ownership comes responsibility. In this case, responsibility for the social and physical well-being of the built environment. But the city of today is generated and maintained by external authority.

Even the most cursory examination of oriental history indicates that 'ownership' was a vital, but hidden, generative force behind the creation of the Islamic City. The morphology typical of such settlements has housing units packed tightly against one another along a maze of roads and cul-de-sacs interspersed with squares and courtyards and an array of shops along perimeter walls, appearing to be tangled and very uncoordinated. Yet the repetition and consistency of this development leads one to believe that such places do not emerge thoughtlessly in this seemingly irregular pattern, which appear to be quite irrational when compared with the clean geometry of modern architecture. It is possible that an understanding of this older urban fabric might lead not only to an explanation of its physical complexities but also to some insights as to how the Islamic City functioned; how its codes of behaviour and technology were perpetuated; and how a truly organic, self-sustaining built environment might once again come into being.

1.4 Objectives

This research takes the position that a close connection between the Islamic City and its inhabitants might possibly have been lost through the disappearance of the basic concept of ownership that has long been imbedded in the very teachings and writings of the prophet ﷺ.

The research concentrates on the informal residential areas of the Islamic City (*Al-Amer*) (see figure 1.1: figure 1.7). These spaces are wholly comprised of truly anonymous architecture, the architecture of societal convention and consensus. There are therefore no names of builders nor celebrated designers or decorators recorded in the stonework. Nor is there is a specific building nor series of 'seminal' examples examined in this study. In other words, the objective of the research is to look for *general* laws that influence the *general* built environment. Thereby the research constructs a diagrammatic and non-specific understanding of 'the Islamic City' as a unique and identifiable artefact equally separate from the Islamic monument (such as the Mosque or grand palace) and non-Islamic City. And, essential to this is the understanding of *Al-Amer* as being a self-generating, self-maintaining complex system which is not random but, on the contrary, coherent and built upon a strong 'logic'.

1.5 Methodology

The 'logic' (rules, principles etc.) behind *Al-Amer* is not written directly into the physical stone of the Islamic City. Since the objective of this study is to seek patterns that have no specific architects nor architectural examples, the author faces the challenge of locating reliable sources where this information he requires may reside.

The author therefore examines various ways in which scholars have addressed their analyses of the Islamic City. Some have concentrated on a symbolic or cosmological point of view; others have pursued the notions of environmental determinism, in which aspects of terrain, resource and climate compelled people to utilise one system of building; while still others regard Islamic architecture that is not monumental as reflecting no design purpose at all. Some see it as nothing special in and of itself, but some offshoot of Greco-Roman design tendencies. These and many other opinions have been evaluated and compared with the written histories of early Islamic building. In all of the research, ownership consistently reveals itself to be the seed that generates all that is distinctive about Islamic architecture.

This then brings forth the question: where is ownership written? Where is the source of evidence to support any claims? What methodology can the author follow to consolidate his hypothesis?

Shari'a is the Divine Law of Islam that comes directly from the Holy Book (*Quran*) and traditions (*Sunna*) of the Prophet ﷺ. Thus, it represents eternal principles and is interpreted into *Fiqh*⁵ by five distinct schools of outlining and administering doctrine⁶ (*Maz'hab*), which represent different regions of the world that have come under Islamic influence. The Malik school, which developed in the areas of Tunisia and Algeria, was the most conscientious in writing down its many cases (even though the Caliphate collapsed many centuries ago, the tradition of this legal system never ceased). The author therefore concentrates mainly on this school, but also refers to three others⁷.

⁵ *Fiqh* refers to Islamic 'derived law'. This is descended directly from the Divine Law of *Shari'a* but is open to flexible interpretation and change in order to reflect the natural evolution of society and of social needs.

⁶ These five doctrines are: the Hanafiya, the Malikiya, the Shafi'iyah, the Hanbaliya and the Shi'ite doctrine.

⁷ It was not possible to acquire a sufficient number of the Shi'a examples to support their overall contribution to the research.

In these written cases, there is a record of all disputes, major and minor, for which there was need to refer to the law to establish a resolution. The judge to whom such cases were taken was a member of the community and therefore conversant in its conventions as well as the subtleties of law. Research indicates that these accumulated legal decisions converged to form a broad framework of meaning in which objects such as land, house, neighbourhood, wall, privacy, noise and so on became conventional concepts, as rights, processes, responsibilities and liabilities in the minds of those who built and maintained Islamic Cities.

Most of these individual urban development cases revolved around the notion of ownership. The initial and apparently simple concept – to ‘own’ is to ‘have’ – rapidly subdivides into many complex issues. How is ownership claimed in the first place if one is not born into a position of owning? How is it affected by lending or borrowing? What does it infer in matters of trespass? Does ownership allow a person to do harm to another by, for example, blocking up a water course that runs through his land? How does ownership relate to the less definite areas of public, semi-public and semi-private objects?

The investigations of the meanings behind the legal arguments brings to light not the objects of the built environment but their significance in the minds and actions of people. It is this that leads to a proper understanding not only of the specific nature and ‘logic’ of the Islamic City but also to an understanding of how densely inhabited places can be generated and regulated so that they sustain life over centuries. Thus, the dissertation provides some critical insights into the hidden forces that formulated that part of the city which in turn was repeated over and over through out the entire Islamic World.

A review of the literature indicates this is an area of investigation that has not been directly covered in studies of the Islamic City. Thus there is no ready source of material or research that can be easily built upon. The formula that the author adopts is to describe many cases and situations as they are recorded in books of law and *Fiqh* – sometimes using direct translations from the ancient Arabic, sometimes paraphrasing these into terms more relevant to today’s context so that they reflect the correct understanding of *Shari’a* that they show. Many such cases naturally refer to actions and objects that evoke a pre-industrial, pre-electricity past. Thus, the cases talk of blacksmiths, open wells and drainage channels etc. that were normal in cities four hundred or more years ago but no longer exist. Since there are modern counterparts to many of these past occupations and urban processes, the meaning implicit in the arrangements and needs behind such features has not become obsolete.

The text contains many notions from Islamic Law that have no direct translation into English, for they refer to family and property structures specific to the Islamic Arabic culture. In order to avoid the problems of clarity caused by using inexact terms, the author provides a complete definition of these in English and continues to use the Arabic word. A glossary of terms is provided in the Appendices.

1.6 Structure of the Thesis

Part One of the thesis establishes the context of the research. It aims to present an appreciation of the phenomenon 'the Islamic City' by investigating its historical background. This presents researchers with a powerful type of settlement pattern that occurs almost invariably over a range of greatly different environmental and social situations. The literature on Islamic Cities that focuses upon the residential quarters rather than the monumental features proposes several approaches towards comprehending this city type, stressing symbolic, economic, cosmological or even aimless causes. This work, however, does not look first at the building fabric but at the meanings of words associated with urbanism and their origins in religious and legal texts. This is supported by studying the early development of Al-Madinah Al-Munawarah, the prototype Islamic City, then the 'First Generation' Islamic Cities of Basra, Koufa, Fustat and Wasit and the 'Second Generation' city of Baghdad. Throughout, evidence is highlighted from original texts when the morphology of the urban fabric is directly related to issues of ownership.

Part Two therefore focuses on the concept of ownership. The various types and hierarchies of ownership are shown to express a range of relationships governing man, objects, needs and dispositions. In this context, *Iqta'a* (the granting or allocation of land areas) and *Ihya'a* (the vitalisation of waste land) reflect their social and cultural potentials. This part represents the core of the thesis and the contribution it provides to our understanding of the phenomenon of the Islamic City.

Part Three takes these findings further. Thus it extracts from these findings principles for analysing the built environment using the concept of ownership as an indicator. It develops on the theme of *Ihya'a* to explain this type of ownership with respect to the various subtle levels of 'incomplete' possession and enjoyment which it derives. It discusses different shapes of building sites and gives an example of each type: the ownership of property without utility; enjoyment of property (*Irtifaqh*); possession of utility without property as in hiring and lease (*Ijara*); and ownership of jurisdiction (*Ikhtisas*). This last term includes matters relating to rules of common walls, easement of roads and the right to water running through other properties.

This analysis leads to a discussion related to the urban fabric – the courtyards, markets and streets. The description of the courtyards includes their concept, meaning, place, development and their different images of ownership and demonstrates how a courtyard can be divided between its users. There follows an explanation of the birth and development of markets. This states the rules applied to opening up a shop to serve the public, discusses the influence of this business on the environment and of seats on the market places (stalls or places for selling). It tells how people gain the right to hold a seat in the market by being the earliest claimants of that place or by benefiting from the right of the ruler (*Imam*) to assign places.

The next section addresses the rules governing the road system of the Islamic City, its construction, its requirements and different phases of its formation and development. The text underscores some examples and cases to clarify the conceptual view of stages of street formation. The study examines jurisdiction relating to openings on the street, their different images, locations and values leading to conventions. It finally covers the meaning of cul-de-sacs, their initiation and development and different ways to use and control them. All considerations are seen to emanate from the principle of harm (*Darar*), the most important rule governing Islamic Cities.

Part Four of the study covers other types of ownership and their role in the re-formation of the built environment. This includes possession by transmission to others by different means – charity, gifting, *Al-Waqf*, *Al-Omra* (two types of grant) among other similar ways - and possession by inheritance. This focus on how property is conveyed leads the author to look at two contrary concepts of ownership as mentioned in the first chapters – preemption (seizure of property by a ‘first come first served basis’, known as *Shofa’a*) and selling.

CHAPTER TWO
Introduction to the Literature Review

— Section One
The City as a Place of Intimacy

CHAPTER TWO

Section One

The City as a Unite of Settlement

CHAPTER TWO

Introduction to Literature Review Section One: The City as a Unit of Settlement

2.0 Introduction

Chapter two is divided into three sections: Introduction; Urbanisation in Islam; and Types of cities and different methods for studying them.

The Introduction, in turn, contains three divisions. The first covers the city as a unit of settlement. The second entails a review and discussion of the literature regarding Islamic urban development while the third focuses on the general image of the Islamic City.

Section Two provides a historical background on Islamic urbanisation and covers seven essential points. The first centres on the roots of design and building in Islam. The second point examines the roots and meanings of words that are used in urbanisation. Thereafter the author deals with the construction requirements for cities and villages mentioned in the Quran, Hadith, *Summa* and precedents established through the Islamic jurisprudence system and *Hissba*. From these it is possible to set forth the general characteristics of the Islamic City.

The third section discusses types of Arabic cities according to their function and role as they emerged under Islam.

2.1 The City as a Unit of Settlement

The study of the Islamic City as a civilised entity is an area of research, which involves many perspectives, for it is linked to relationships across numerous scientific fields.

Considerable research has appeared in the West in the last century centring on the phenomenon of the Islamic City¹. Conferences have been held since the 1950's to discuss this field of research which turned into a vast discipline comprising sociology, geography, history, urbanism

¹ Such as Max Weber, Louis Mumford, K.E. Bading, G. Sjobay, A. Iveber, R.R.K. Fard, R.T. Donald, E.Mac, Adams and Toynbee.

and topography in addition to studies regarding social and environmental circumstances. Structural studies, which deal with political, economical, ecological, religious, military and cultural concepts, were also indicated.

Most researchers focused on the European City in particular to discuss the conditions and stipulations of its appearance before and after the industrial revolution. They also studied old cities in China, India and Japan and even further afield in various ancient civilisations, in the attempt to discover the formal principles of what could be called urbanised sociology.

The objective of such a discourse was to extract conditions and aspects of the general appearance and development of the urban phenomenon in order to lay down some rules in this regard. It is noticed here that most of these scholars researched the city on the basis of it being an immovable, strict concept.

Above all, human civilisation is the building of cities. Cities as coherent social do not develop swiftly but through time. This development follows events within the community, which supports them and the cosmology that defines that culture.

Therefore some researchers have sought to propose generalisations to explain mutual features of cities. This approach is flawed, as each culture has its own conception of urbanisation, each territory or nation has its own distinguished cities in view of their characteristics and life style. Also there are special features which characterise various cities and even particular districts or territories within them.

The outcome is that the above factors make it impossible to identify any great degree of similarity among different cities. Each civilisation portrays its image in its cities including the beliefs to which the human community within them subscribes. Each city reflects the capacity of its owners of adaptation and transformation of environmental and geographical conditions to meet their own needs, ideas and tastes.

In this respect, the Islamic City is no exception given the following reasons:

- Throughout its foundation and development, it is an artefact of Islamic culture.
- It is an aspect of Islamic society based on its political, social and administrative systems and the place of its cultural institutions and various utilities.

- Islamic Cities have developed through many centuries and this development differs according to the diversity of environmental circumstances to which each was exposed.
- Islamic Cities, in spite of being different in type from one territory to another, are distinguished by a *unity of rules*, which has governed the environmental relationships of their population. They therefore tend to show similarities across a range of territories.
- Al-Madinah (*Yathrib*) was the prototype and prime example of the Islamic City, which Muslims followed in foundation of their other cities.

2.1.1 Review of Literature

2.1.1.1 Attitudes of Researchers in Respect of the Islamic City

The treatment of the concept of the Islamic City by the scholars listed below indicates the misunderstanding of this city type. Most misconceptions result from not understanding that the distinctive city emerged from a distinct ideology and incomparable manner of life and thought. On the contrary, many investigators considered it within the European concept and began to apply their views of Western Cities and make comparisons between Islamic City and other European, Greek and Roman models intentionally stressing shared characteristics. One researcher even wondered, “*Is there an Islamic city?*” (Dale Eickelman, 1974) asking whether a special category or image indeed existed. Opinions of other scholars are listed below:

Cahen C., in several researches into the Islamic City, studies its popular institutions and suggests the name ‘Dar Al-Islam’ (Place of Islam) in place of ‘Islamic City’. Even he sees housing assemblies as being mindless and spontaneous.² Sauvaget sees in his studies on Aleppo, Damascus and Lazikiya that these are an imitation, i.e., a mutilation of the Byzantine City or the Greek Roman City.³ Louis Gardet, in his book “Islamic City”, does not recognise in it an administrative institution or an enjoyment of independence or feeling of citizenship.⁴ Xavier De Banhol, in his book “The World of Islam”, believes that the Islamic City represents a mess

² Cahen C.: “*Y’a-t-il en des corporations professionnelles dans le monde musulman classiques?*” (Reflections on the Islamic city), Hourani and Stern, Oxford, 1970, pp.53 – 63. Also see: “*Mouvements populaires et autonomisme Arbian dans L’Asie Musulman du Moyen Ages*” in *Arabica* (V, 1958) pp. 225-250 and (VI, 1959) pp. 26-56 and 223-265. “*Baghdad au temps de ses derniers califes*” in *Arabica* (IX, 1962) pp. 289 – 302.

³ Sauvaget, “*Esquire d’une histoire de la ville de Damas I Revue des études Islamiques*” (VII, 1943) pp. 421-480. “*Antioche, essai de géografic arabaine*” in *Bul. d’études orientales* (IV, 1934) pp. 27-79. “*Antioche, un type de cite d’Islam*” in *Congress Inter de Géographie* (III, 1937) pp. 255-262.

⁴ Gardet, Louis: “*La Cité Musulmane: Vie Sociale et Politique*” (Paris, 154) p. 259-260

in planning and lacks any structural unity as well as having weak foundations and establishments.⁵

Louis Massignion talks about types of Islamic Cities and the effect of Islam in emerging Jewish banks, syndicates and popular movements.⁶ Benet L. is interested in the tribal typology of the first Islamic Cities and makes this a major reason behind the foundation and shaping of cities.⁷ Henri Pirenne located the causes of the Islamic City, in a trading depression and discontinuance in the Mediterranean area. He also referred to the Islamic conquest as the cause of collapse of ancient cities in the East.⁸

On the other hand, there have been other Western researchers who have seen the Islamic City from a different point of view. They took Islam as its ideological base and conclude that the Islamic City is attached to virtues of Islam. Among them are G Marçais⁹ and also his brother.¹⁰

Another scholar, Lombard, indicated in his research¹¹ that Islamic urbanisation had more dimensions and effects than had Roman and that it corresponded closely to Greek and Western urbanisation. Islamic Cities appeared in the world, developed through time and represented a major urban theatre from the 8th to the 11th century. Lapidus¹² also rejected Pirenne's views, which stated that Islamic conquest led to the spoiling of the old classical cities. She proved that they had become largely degenerated a long time before that conquest and had lost their urban features as well.

2.1.1.2 Problems Associated with the Various Research Approaches

⁵ De Banhol, Xavier: "The World of Islam" (New York, 1959).

⁶ Massignion, Louis: "Le Corps de Métiers et la cité Islamique" in *Revue Internationale de Sociologie* (Vol. 28, 1920) pp. 473-490. "L'influence de l'Islam aux Moyen Ages sur la fondation et l'essor des Bagues Juives", in *Bulletin des études Orientales* I, 1931) pp. 3-12. -"Sinf", in *Encyclopaedia de l'Islam* (Ancien Edition).

⁷ Benet L.: "Ideology of the Muslim Urbanisation".

⁸ Pirenne Henri: "Medieval Cities" (Irrington, 1925), also see "Les villes sont l'oeuvre des marchands" in *Revue Historique* (VII).

⁹ Morçais, G in his research: "L'urbanisme Muslman" in *Mélanges de l'Histoire et d'Archéologie de l'occident Musulman* (I, 1957) pp. 212-231. and his other research: "La conception des villes dans l'Islam" in *Revue d'Alger* H. 1945, pp. 517-533.

¹⁰ W Marçais in his research "L'Islamisme et la vie urbaine in compte rendue des Séances" (Academie des Ins. et Belles-letters) 1928 pp. 86-100.

¹¹ "L' Age d'or de l' Islam" (Paris- 1960).

Researchers differ in their method of research of Islamic Cities and consequently they arrive at different viewpoints as aforementioned:

- Some study them within the framework of political and economic institutions (see Cahen C. 1970, Gardet Louis, 1954).
- Some study them within the framework of social concept (Michell, G., 1978).
- Some consider them from the viewpoint of urbanism (see Morcais G. 1957).
- Some consider them from the viewpoint of monumentalism (see Cresswell, 1982, Helen Brand, 1998).
- Some study them within geographical or housing concepts (see Mostafa, G. 1958).
- Some studies dealt with a certain city within all its aspects (see Janet Abu Lughed, 1987)
- Some studies surveyed more than one city to make comparisons among them (review Lapidus, 1970)
- Some studies dealt with the Islamic City from a general comprehensive view (see Horani and Stern, 1970)

All researchers proposed their own results, which they deduced from their own hypotheses, methodologies and paradigms. However, it is dangerous to consider these opinions and deductions as factual and then adopt them. In the author's opinion they fail in that they all consider the Islamic City from within the framework of concepts of the Western classical city whether Greek or Roman. Thus, they transfer the Islamic construction to another sector of intellect and then evaluate it. If the Islamic City indeed constitutes a special category of urban phenomenon, this cannot be considered an appropriate method of analysis for it leads into an illusion and misunderstanding of the Islamic City.

On the contrary, the city of the Romans or Greeks, the classical Western City, is not an 'ideal' criterion or 'perfect' type, which comprises global comprehensive advantages. Each group of cities in a certain region has its own features and advantages, which can not be compared to others. They have also their own rules, which govern their foundation and development.

Therefore the Islamic City has its own particular characteristics attached to ideological roots which encompass and form it. The Indian and Chinese City also have their own features related to their civilisation and functions that emerged from the cultural formation of the environment in which they were developed.

¹² Lapidus, Ira: "*Muslim cities and Islamic society in Middle-Eastern cities*". For a further review see Hourani and Stern: "*The Islamic City*" (A Colloquium, Oxford 1970).

As a result, the methodologies which were set forth to understand the Islamic City on certain bases do not conform to Islamic logic, principles and needs. Thus, they should be re-evaluated or even rejected in initiating a study of the Islamic City.

The intensive studies of these European orientalists of the Islamic City, combined with a lack of any Arab participation in the field, has attenuated the efforts of Western theorisation and concepts of technical knowledge come to the fore and hide from others the immense heritage of Arab ancestors of scientists in this respect.

There have not been in the history of humanity documented by Europeans, at least until recent times, nearly as many books related to Islamic Cities and their studies as those of Arabs and their great heritage, which would be a surprise for some researchers¹³.

For in fact, Arabic scholars have studied cities in books of history in the first place, in geographical books, in encyclopaedias and collections of plans and travelogues. They also recorded first hand the states and different conditions of these cities – this is our concern in this research – in books of jurisprudence, *Hissba* and politics. This knowledge can also be found in works of literature, social behaviour as well as in books of construction and its philosophy. These latter aspects of the true resource of information about Islamic Cities provide in great accuracy a way of initiating and pursuing a certain scientific veracity in this concern (Shaker, 1988, Vol. 1, pp.37-63).

2.1.1.3 Reasons for Similarities Among Islamic Cities

In fact, modern scholars appear to have paid little attention to the original works of historical Muslim scholars. It is noticed that all early Arab writings were issued according to one philosophy and one set of firm principles which are those of Islam and Islamic law *Shari'a*. Arabs were writing permanently in accordance to the said principles and always referred to them in solutions and applications.

This deep connection between constructional knowledge and its practical applications provides Islamic Cities with that sameness in their appearance and that tangible unity in their components. It previously provided Muslims a social life and way of behaviour which

¹³ For more details review Shaker, 1981, vol. 1, pp. 37 to 67.

conformed to Islamic morals and requirements. It also conformed with the material form of the city.

In this way, the city and its population formed a harmonic unity of two worlds that reflected each other. Modern, internationalised cities, on the contrary, are now very different to the thoughts of those who live in them; the modern city dweller typically feels loneliness and isolation and a lack of interaction with the built environment.

Thus, the lack of understanding the basic workings of the Islamic City, whether in its establishment, development, population or their Islamic principles as well as the inability to integrate all of these into one urban theory, has led to the loss of the spirit of Islamic City and its most profound civilisational influences and advantages.

The author believes that it is beneficial to highlight that the Islamic *Fiqh* has a major role in making the Islamic City conform to its population in construction, life and system. Since *Fiqh* derives its principles and rules from the Holy Quran and *Sunna*, it is also affected by developments of Islamic life and constantly seeks solutions for recurring problems that might arise. In this respect it continually enriches the Islamic, civilised and constructional experience.

The Islamic City has always been a living entity, which developed with needs of Islamic society. It is also attached to roots and principles of Islam. Here lies the '*secret*' of the city and this is what this chapter and indeed the whole research, attempts to reveal and highlight. The author would like to pinpoint in this regard some fundamental guidelines that emerged through his research and readings about the Islamic City as follows:

- It is unacceptable to view the Islamic City through all ages from one aspect alone, cautioning researchers not to mix one era with another to obtain results that have been assumed in advance.
- There is a development over time in the city – as a unique entity - through long periods of growth and change. These changes were influenced and imposed by certain constants and variables in culture and environment and these are specific to each city. The variables are related to housing and political and economic circumstances, while the immovables cover the geographical environment and climate (Janet L. Abu-Lughed, 1987, pp.155-176).

The division of cities according to their functions or characteristics views them incorrectly and inaccurately and labels them under categories are often too simplistic. Some characteristics of

the cities may stand out more than others and constitute a particular civic advantage, but one function alone cannot account for the complexity of a large city. For example, labels which are fixed for cities by determining them to be single function cities include the classifications of trading ports, military forts or religious centre. There might be some settings that promote certain strategic advantages that are valued enough to become the origins for a fully-fledged city as said by some researchers that the city should contain a fort, wall, court, syndicate and autonomy or it is authority, gymnasium, theatre, market, water, borders and representative council. Or, as described by some Arab authors of heritage, “*There is a Mosque in each country where penalties are adjudged, set by a prince as he provides expenses and collects its Rustaqu¹⁴*”, or it is “*each country where the great Sultan settles in, Divans¹⁵ are gathered, proceedings are initiated and cities or regions are added*” (Shaker, 1988, Vol. 1, pp.41, 42).

From this emerges a question: *Is it then possible to adopt any basic or fundamental theory of cities which has the competence to explain the Islamic City?*

The answer must be ‘no’, because every theory has a factual ‘cause’ which might appear as the necessary and defining component in a certain city (or several cities) yet be unknown of in another, or might be magnified to attain undue importance in a certain period while being irrelevant in others.

We may count almost 450 cities that Islam has added to the world; each needs to be studied separately as a civilised unit derived from its own advantages from the formula inherited from Islam. In next pages, the author discusses the foundation and development of some great cities in Islam and focuses in this respect upon the city in general and its acquired lessons. He then examines the inhabited areas of this city and shows how it was founded and developed through time.

¹⁴ Other smaller towns and/or villages.

¹⁵ *Divan* is the council and the public registry office.

Section Two

Historical Background of Urbanisation in Islam

2.2 Introduction

This part of the dissertation brings to light some important passages in the Holy Quran and *Sunna* (sayings, acts and agreements of the Prophet ﷺ) that tell us about traditional (historical) urban development meanings, concepts and usage.

2.2.1 Roots of Constructional and Building Technology in Islam

Islam refers its prime roots to the Prophet Abraham ؑ and his son Isma'il ʾ, 3000 years before Islam as indicated in the Holy Quran, *“And strive in His cause as ye ought to strive, (with sincerity and under discipline). He has chosen you and has imposed no difficulties on you in religion; it is the cult of your father Abraham. It is He who has named you Muslims, both before and in this (Revelation); that the Messenger may be a witness for you and ye be witnesses for mankind! So establish regular Prayer, give regular Charity and hold fast to Allah! He is your Protector, the best to protect and the Best to help!”* (Quran, Surat Al- Hajj, verse: 78).

This report and reference to Abraham refers to his duty as indicated in the Holy Quran *“And remember Abraham and Isma'il raised the foundations of the House (with this prayer): “Our Lord! Accept (this service) from us: for Thou art the All-Hearing, the All-Knowing”* (Quran, Surat Al-Baqara verse: 127). There is also his saying: *“And remember Abraham said: ‘My Lord, make this a City of Peace and feed its People with fruits such of them as believe in Allah and the Last Day’. He said: ‘(Yea) and such as reject Faith, for a while will I grant them their Pleasure but will soon drive them to the torment of Fire, an evil destination (indeed)!’”* (Quran, Surat Al-Baqara verse: 126).

Thus, Islam attests to its urbanisation by virtue of:

- Construction (... *raised the foundations*)
- Ka'aba (... *of the House*)
- City (... *make this a City*)
- Security (... *a City of Peace*)

These four elements are available as part of the constructional knowledge of a civilised context. Islam is a civil religion in its essence and attached to urbanisation, cities and construction. It is also attached to advanced intellectual, social and economic life, the stable organisation of people and the co-operative open meeting. In the meantime, it rejects nomadism as a way of life in order to encourage a solid connection between the social state (either nomadic or urban) and the ideological, moral one. This meaning is fully understood by Muslims in that it is the needs of people whose civil life is encoded into the urban texture, this is what legislation is based upon, rules are connected to and upon which relations and regulations are planned. A nomadic life, on the contrary, does not involve any sort of stability and the travelling life-style refutes security, construction and the house.

Therefore, the constructional intellect in Islam seeks to assert this urbanisation and its relationship to personal and social life. Thus the Prophet Mohammed ﷺ merely carried out four main tasks as follows:

- Establishment of the Mosque to be used for worshipping, meeting, adjudging, exacting penalties, sending messengers and preparing armies.
- Establishment of his house as premises and house for the new system.
- Gifting parts of lands for emigrants in order to vitalise and reclaim these.
- Publishing the paper 'the book' which determines responsibilities and nature of relations in the city. This is called today 'Constitution of the country'.

These four tasks gave the city image for Al-Madinah and made it the first city in Islam.

2.2.2 Meanings of Construction in Islam and Connotations of its Arabic words

Arab cultures do not use one word 'urbanisation' for their civilisational phenomenon. They use several, as follows:

Border (*Misr*, plural *Amsar*): This means the border or the obstacle and *misr* of the *dar* means its borders. This interprets saying by Omar Ibn Al-Khattab ؓ when he wrote to his leaders in Iraq "...and select a location which has no water feature separating between you and me..." (Al-Balazri, 1957, pp. 385-386).

Borough (*Qassaba*): A term used by people and authors to refer to a city centre mostly or site of movement, meeting and exchanging. Borough of the country means its city. The borough of the village means its centre and borough refers to the village itself as well.

Metropolis (*Al-Haderah*): This is the opposite of nomadism and means the civilised place. Linguistically, *Hadar* means the one living in the cities, as opposed to Bedouin, the desert dweller. *Hadar* also means any person who descends on a water spring and does not leave it in summer or winter.

Village (*Qarya*): This is the collective of *Misr*.

City (*Madinah*): Linguists agree that its origin is '*Dayn*'. It refers to possession, judgement and ruling. It also means law and justice and, by virtue of this, an advantage in the city is proved that it is the place of authority, law and judgement. It also means settlement which stands against departure '*Za'an*'. It also refers to the foundation of buildings and houses. To this, one can add: country (*Balad* / plural *Bilad*; *Hawzah*); county (*Qourah*); village (*Qarya*; *Amela*, *Madarah*).

In addition to linguistic meanings of the city, Ibn Manzoor (1956) and Al-Fayrooz Abadi (1954) indicate that "*the city is the fort which is built on a hill of the land and this means protection and defence of its people*".

The Arabic language also provides the following terms to express what surrounds the city:

Outskirts (*Rabad*): These surround the city and are attached to it. They lie outside the housing areas or the city walls. Thus, this represents a buffer zone that can expand to accommodate the fluctuating populations of big cities.

Oasis (*Ghouta*): It is a special name relating to outskirts of Damascus (Sham).

Suburb (*Daheya*): The suburb of the city is its prominent part and it is located away from the city and its dwellings. This is the major difference between the countryside and the suburb in view of the Islamic geographical conception. Other words that refer to what surrounds the cities are countryside (*Reef*); and hamlet (*Day'aa*) (see figure 2.1).

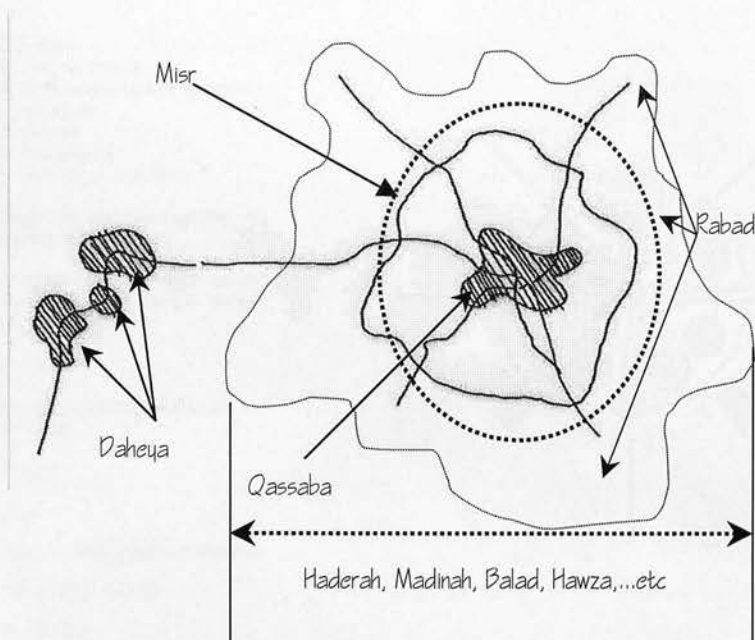


Figure 2.1 Meanings of Construction in Islam and Connotations of its Arabic Words (Source: the Author).

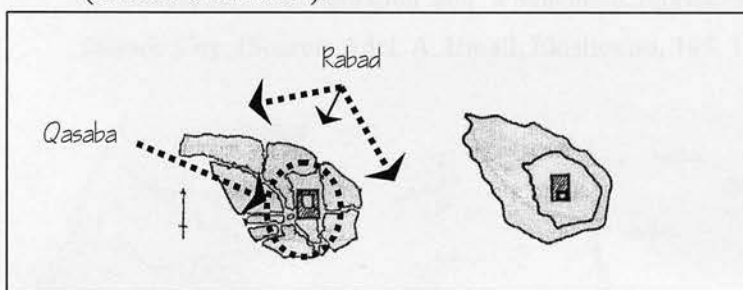


Figure 2.2 Al-Madinah as the first prototype for later Islamic Cities (Source: the Author Based Upon Saleh. L.).

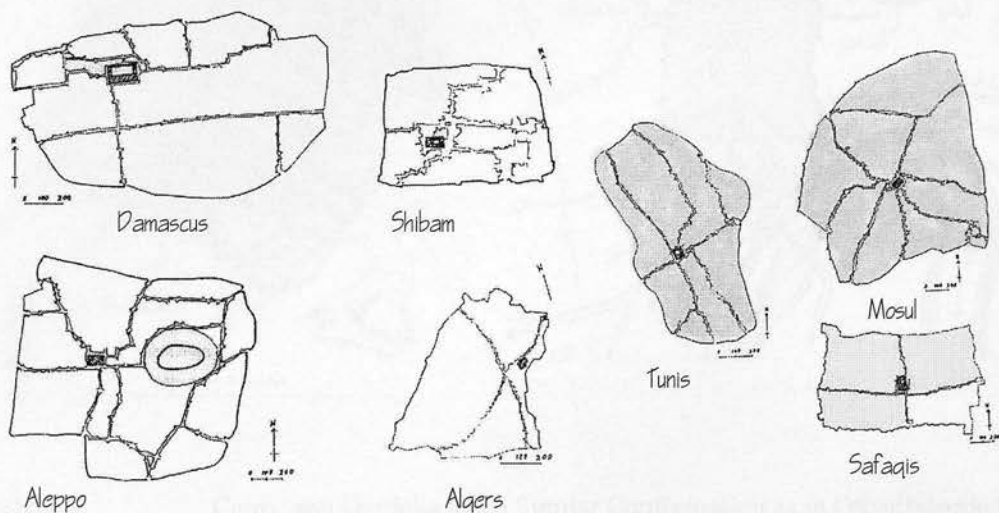


Figure 2.3 A Similar Concept of Configuration was Repeated in Various Islamic Cities in Different Places (Source: the Author Based Upon Raymond).

- A. City Core
1. *Jami'* mosque
 2. *Qaysariyyahs* and specialized *sūqs*
 3. *Khāns*
 4. *Hammāms*
 5. Square or *maydān*
- B. *Sūqs* on the thoroughfare or *qasabah*
- C. A residential quarter or *ḥarah*, including local mosque, *suweqah* and *ḥammām*
- D. The citadel
- E. The government area or *al-makhzan*
- F. *Khāns*
- G. Wall
- H. Open market place or *maydān*
- I. Semi-rural district
- J. Cemetery
- K. Cultivated fields, pastures and parks

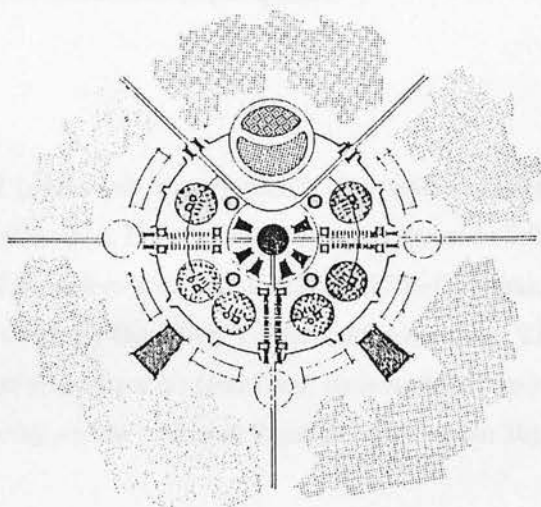


Figure 2.4 A Conceptual Configuration and a Schematic representation of an Early Islamic City. (Source: Adel. A. Ismail, Ekistics no. 195, 1972, p.120).

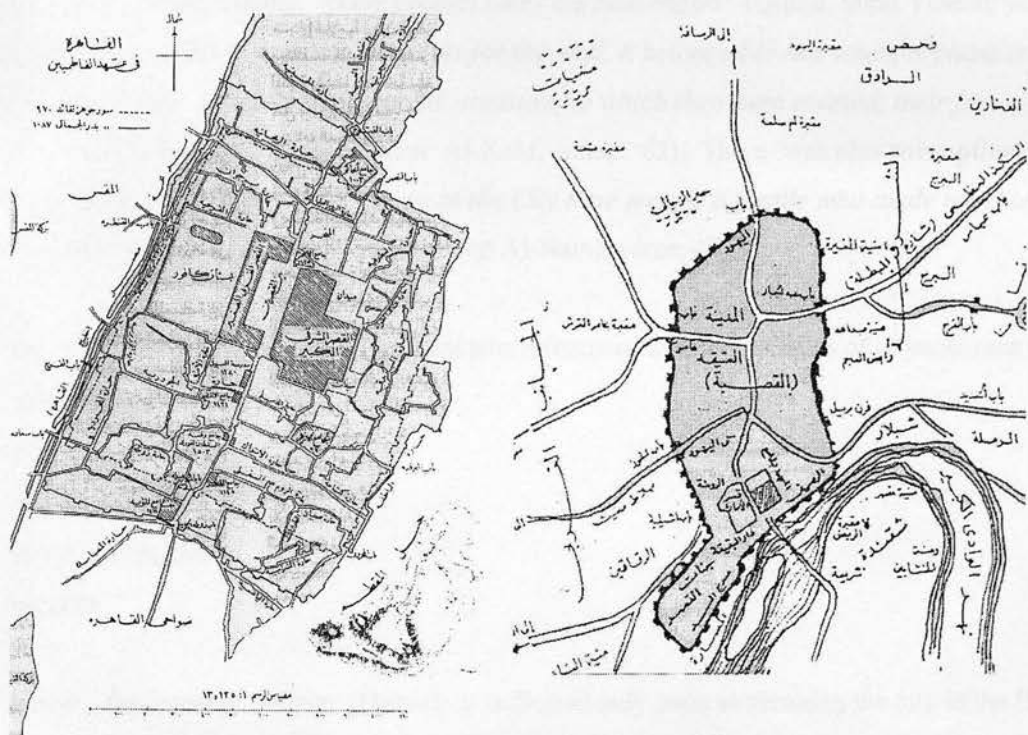


Figure 2.5 Cairo and Qurdoba had a Similar Configuration as in Other Islamic Cities (Source: the Author based on Janet Abu-Lughed, 1971, Al-Manhal, 1979, p.12).

2.2.3 Concepts of Construction and Urbanisation in the Quran

2.2.3.1 Introduction

The word city (*Madinah*) and its plural (*Mada'en*) is mentioned in seventeen places in the Quran, providing different meanings and references. These include the reference of **building-up**, **gathering** and **multitude** as in, "...Then Pharaoh sent heralds to (all) the Cities" (Quran, Surat Al-Shuar'âa verse: 53); as well as a city's **rule by the King** "*Ladies said in the City: 'The wife of the (great) 'Aziz is seeking to seduce her slave from his (true) self: truly hath he inspired her with violent love: we see she is evidently going astray'*" (Quran, Surat Youssuf, verse: 30).

They also referred to the **market**, "... Now send ye then one of you with this money of yours to the town: let him find out which is the best food (to be had) and bring some to you, that (ye may) satisfy your hunger therewith: and let him behave with care and courtesy and let him not inform any one about you". (Quran, Surat Al-Kahf, verse: 19).

Other verses also refer to **housing capacity**, "*Then there came running, from the farthest part of the city, a man, saying, "O my people! Obey the messengers"* (Quran, Surat Yaseen, verse: 20). They also refer to **construction**, "*As for the wall, it belonged to two young orphans in the Town; there was, beneath it, a buried treasure, to which they were entitled; their father had been a righteous man"* (Quran, Surat Al-Kahf, verse: 82). There was also **corruption and spoiling inside the city**, "*There were in the City nine men of a family who made mischief in the land and would not reform"* (Quran, Surat Al-Naml, verse: 48).

All the aforementioned examples represent true references to characteristics of cities as seen in:

- a political authority;
- a lot of population;
- markets;
- construction; and
- security.

Moreover, the concept village (*Qarya*) is indicated only once as meaning the city in the Holy Quran, "*Ask them concerning the town standing close by the sea"* (Quran, Surat Al-A'raf, verse: 163).

City (Balad) has been mentioned nine times, **cities (Bilad)** five times and **feminine (Balda)** four times in the Holy Quran. It means city or cities as mentioned in: “*And remember ‘Abraham said: ‘My Lord, make this a City of Peace... ‘Baladan aminan’*” (Quran, Surat Al-Baqera, verse: 126).

2.2.3.2 Ihya’a and its Relation of Constructing and Finding of Islamic Cities

Repeated reference can be found regarding the vitalisation of land in respect of water and *Ihya’a* of the land as, “*That with it, We may give life to a dead land,*” (Quran, Surat Al-Furqan, verse: 49), “*That sends down (from time to time) rain from the sky in due measure; and We raise to life therewith a land that is dead; even so will ye be raised (from the dead);*” (Quran, Surat Al-Zukhruf, verse: 11), “*As sustenance for (Allah's) Servants; and We give (new) life therewith to land that is dead: thus will be the Resurrection*” (Quran, Surat Qaf, verse: 11), “*It is Allah Who sends forth the Winds, so that they raise up the Clouds and We drive them to a land that is dead and revive the earth therewith after its death: even so (will be) the Resurrection!*” (Quran, Surat Fatir, verse: 9).

“... and, “*From the land ‘wa albalad at-ta-yeb’ that is clean and good, by the Will of its Cherisher, springs up produce, (rich) after its kind: but from the land that is bad, springs up nothing but that which is niggardly*” (Quran, Surat Al-A’raf, verse: 58).

The above quotations strongly indicate that the word **Balad** means what we call now the village and it is smaller than the city with its surrounding natural and planted environment. However, the term village (**Qarya**) is the most frequently indicated word in the Holy Quran as it is mentioned in **fifty six** places, meaning the city in all but in **one verse** in which it means the **port** or the **harbour** as, “*And ask them about the village which was close up to the sea*” (Quran, Surat Al-A’raf, verse: 163).

2.2.3.3 Hierarchy of Cities as a Concept

The importance of cities according to their functions and effectiveness in the surrounding area is a considerable factor behind this hierarchical categorisation. Mecca is mentioned as **Om Al-Qurrah** (the mother of all cities), Allah ﷻ said “*that thou mayest warn the Mother of Cities and all around her*” (Quran, Surat Al-An’aam, verse: 92).

2.2.3.4 Reference to Houses

*“And how many **Qarya** [populations] We destroyed which exulted in their life (of ease and plenty)! Now those **houses** [habitations of theirs] after them are deserted, all but a (miserable) few! And We are their heirs!”* (Quran, Surat Al-Qassas, verse: 58).

2.2.3.5 Walking Distances and the Charm of Being Close and Secure

There are references to a multitude of cities (villages) being close up together and the relationship created by this closeness: *“Between them and the **Qourah** [cities] on which We had poured Our blessings, We had placed cities in prominent positions and between them We had appointed stages of journey in due proportion: ‘Travel therein, secure, by night and by day’”* (Quran, Surat Saba, verse: 18).

2.2.3.6 The Fortification of Cities (villages) by Walls

“They will not fight you (even) together, except in fortified townships or from behind walls” (Quran, Surat Al-Hasher, verse: 14).

2.2.4 Concept of City in the Hadith of the Prophet ﷺ

Prophet Mohammed ﷺ mentioned the city in about twenty Hadith which indicated clear features of concept of the city, village and fort. All these are indicated in the six books of *Sunna*, the *Sunan*¹⁶.

Muslim narrated in the strives in obvious significance about the city port the Hadith by Prophet Mohammed ﷺ *“You heard of a city of two sides; one inland, one in the sea”* (Sakher CD, 1996, Muslim, no.5199).

Al-Bukhari narrated in a reference to the phenomenon of the wall and the city gates, *“We established the city gate, then we asked assistance of Allah to enter the city –then we were let be*

¹⁶ These are the six books of Hadith of the Prophet ﷺ: 1) Abu Dawoud 2) Al-Daremi 3) Al-Nessa’ie 4) Ibn Maga 5) Al-Termizi 6) Ahmed Ibn Hanbal in addition to Al-Bukhari, Muslim and Malik’s Mowata’a.

in” (Sakher CD, 1996, Al-Bukhari, no.6525).Ibn Hanbal, “*We came to the end of a fort or a city*” (Sakher CD, 1996, Ahmed, no.22610).¹⁷

2.2.4.1 Mentioning the Village as Being a Village

There are about **sixty-three** places in which the notion of a village (*Qarya*) is mentioned in Hadith. This included specific villages such as Al-Aylah and Jawada (this was a village belonging to Abdul Qays in Bahrain) and the villages of Abdul Razak, Okba, Al-Safa, Fadk and of Hajar. All these refer to small towns surrounded by plants.

2.2.4.2 Mentioning the Village as Being a City

“*The last village of Muslims’ villages being laid waste is the city*” (Sakher CD, 1996, Al-Termizi, no.3854) and also “*Abraham entered a village... that had a certain King*” Sakher CD, 1996, Al-Bukhari, no.2065).

2.2.4.3 Indication of the Collective Village

This concept is talked of as being similar to a city but without a wall, “*As if you were in a collective village*” (Sakher CD, 1996, Al-Bukhari, no.2367).

2.2.4.4 Mention of the Difference Between City and Village Urban Concepts

This includes Prophet’s ﷺ saying: “*Do you live in a city or a village now? He answered: in a village*” (Sakher CD, 1996, Ahmed, no. 26241). There is also Salman’s saying: “*I was a Persian man from the people of a village*” (Sakher CD, 1996, Ahmed, no. 22620) and Omar’s sayings: “*People have come close up to the countryside and villages*”, (Sakher CD, 1996, Muslim, Ahmed and Abu Dawood, no. 3883) also: “*Because non-Arabs belong to their villages*” (Shaker, 1982,p.48) and “*There was no well in Abdul Razak’s village*” (Shaker, 1982, p49).

¹⁷ In indication of **Damascus** and **Yathrib** as cities, Prophet Muhammad said, “*O God! Bless people of Madinah in their city*” as narrated by Ibn Maja in chapter of foods and Ibn Hanbal and Muslim. “*A city called Damascus*” as narrated by Abu Dawood in epics and Ibn Hanbal.

2.2.4.5 Use of the Term *Mudar*

This word has no direct equivalent in English. It means clay for constructions. Words associated with *Mudar* therefore express the opposite concept to the family of words related to the hair of camels, which stands for tents, as Prophet Mohammed ﷺ said, “*Nothing of tents or Mudar will be left on land*” (Sakher CD, 1996, Ahmed, no. 22697). Also, “*that I would own people of tents and Mudar*” (Sakher CD, 1996, Al-Nasa’ie, no.3102) and “*A Mudari of people of Yemen accompanied me*” (people related to Al-Daremi, the narrator of Sunnan) (Shaker, 1982, pp188).

2.2.5 Urbanisation and Construction of the City in *Fiqh*

The construction of the city in *Fiqh* presents a wider spectrum of legal rules from the *Quran* and the *Sunna*. The application of these rules has been extended to meet the needs of Islamic life. These needs in turn focus upon stability in land, plants and construction. People need these rules to mediate social patterns in the Islamic City. Therefore, legal opinions and rules of accidents in regard to construction begin to appear. At this point, jurists become responsible for the foundation of the Islamic City or its modification if it is not a new settlement.

The jurists acted as civic engineers and builders from the time of the Islamic City’s early foundation. *Fiqh* always has its own wording since it is dependent upon the personality of the legal legislator. In *Ihya’a*, the rule states “*The one who vitalises a dead waste land can claim that it is his*”. In regards to a neighbour, there may be “*No mischief, no reciprocal harming*” and this stricture maximises social benefit and prevents loss. Thus, jurists discussed rules of lands ownership (*Al-Milkiya*) and resulting easement rights (*Al-Irtifaqh*), curtilage (*Al-Hareem*) rights, rules of streets (*Haqh Al-Tareeqh*), passages (*Al-Moroor*) and shed constructions (*Al-Irtifaqh* with the air), rules of markets (*Al-Aswaqh*), including cleanliness and distribution, rules of the city walls, provision of security and drinking water and rules of mortmain (*Al-Waqf*) etc. Thereby, jurists are able to resolve rules for buildings and of the structures attached to them.

Jurists divide buildings into four categories; each with its own characteristics and rules. They are as follows:

- **Obligatory Constructions** : those ‘necessary and inevitable’ ones such as Mosques, forts, dams and bridges;
- **Delegated Constructions**: those such as minarets, markets, schools, drinking fountains (*sabeels*) and toilets;

- **Permissible Constructions:** those such as houses and shops;
- **Prohibited Constructions:** those such as arched graves or exaggerated construction or construction on another person's land¹⁸.

Jurists also researched the suitability of construction materials, building foundations in accordance with various conditions; statements regarding rights of walls, rights of the owner of lowest part and of the owner of the highest part of the same building; rights of the builders of separating walls, dead waste land; land of mortmain and prevention of construction in certain locations such as sanctuaries. They also discussed rules for selling or renting the structures, right of preemption, easements and rules of inheritance for the dividing of buildings.

There was also an officer called *Al-Faradi*, who could be found in the Mosque near the judge to illustrate rules of legislation in these manners to resolve disputes.

Jurists also explained rules regarding graves and their proper locations and rules of public cleanliness such as concerns rules of toilets, public decency and neighbourhood standards for hygiene.

In fact, *Shari'a* is the law of Islam which constitutes evolving judgement among people. The judge was one of the pillars of the fundamental authority in the city; and no place could be considered a city unless such a person was there. He had the right of resolution of statements of the city and its population.

2.2.6 Urbanisation and Construction in *Hissba*

Hissba is one of the State's practical functions. It concerns the establishment of a public principle of Islam in the fields of legislation, transaction and morals. In other words, it is a legally recognised code of conduct and ethical behaviour. It is based upon the principle of enjoining what is right, forbidding what is wrong and reconciling differences among people. Thus, it is a reflection of the measure of solidarity in the community and public responsibility.

Hissba is an administrative monitoring of the daily goings-on of ordinary Muslim people which the State carries out in the city through specialised officials as per the principles of Islamic legislation and traditional customs which are agreed upon in every territory. Thus, it is a basic

¹⁸ For more details review Ibrahim Al-Fayez, 1990.

principle of the organisation of the Islamic City. It may carry more power and authority in certain countries than in others. It is also an immediately available source of arbitration between two litigants, as they need not wait to see the judge at any appointed time to resolve a dispute. The controlling *Hissba* official carries out the monitoring of the public himself and sets the penalty. The origin of this system of control is the Hadith of the Prophet ﷺ: “*The one who acts dishonestly is not one of us*” (Sakher CD, 1996, Muslim, no. 2216). The author discusses *Al-Hissba* in detail later.

2.2.7 Concept and Characteristics of the Islamic City

From the previous presentation regarding linguistic and Quranic concepts, it can be seen that the Hadith of the Prophet ﷺ and the *Fiqh*, have their own fundamental elements which can be listed as follows:

- A defined place for the meeting of a great number of people;
- A place where most activities are not agricultural;
- A place that includes the principality House from where a political authority (Sultan or Judge) imposes justice among people;
- A place that includes the Mosque for prayer, teaching, meeting with the Sultan and where Friday's prayers are held. It is not permissible to hold Friday prayers except in a community of houses. These prayers cannot be held in tents, since settlement is one of their pre-conditions.
- A place that is comprised of houses, which are constructionally attached together.
- A place that cannot turn a resident away either in summer or winter because it is the place of settlement.
- A place that is safe and protected by walls and forts to maintain construction, benefaction and commerce.

These are the basic factors, which should coexist in the Islamic City to secure its continuity in perpetuity. These are also the criteria which we should refer to if we wish to determine advantages of the Islamic City and the urban form established by Muslims. To judge these cities by Western standards is incorrect for it ignores the diversity of concepts and traits among people and fails to understand that the roots of the Islamic City rests in its spiritual principles, texts and history as much as, if not more so than, any organisational, political or architectural factors.

Section Three

Doctrines for Studying Islamic Cities

2.3 Doctrines for studying Islamic Cities

There are four doctrines for studying the cities as follows:

- In accordance with their function;
- In accordance to their date of origin;
- In accordance to their chronology;
- In accordance to their general planning basis (For more details review Shaker, 1982, Vol. I, pp.121).

2.3.1 In Accordance with their Function

By ‘functions’, the author means commercial or religious centres, or ports or places for military or agricultural purposes etc. Von Grunbaum divides the Islamic Cities into two groups: 1) spontaneous city 2) created cities.

- **Spontaneous Cities:** These are completed cities formed by the State’s planning. They are founded, but then develop spontaneously. They are the most common type in the Islamic world.
- **Created Cities:** These are divided into four kinds.
 - **New fashioned Capitals:** Such as Baghdad (Abbaside Capital) and Fez (Idrisi Capital)
 - **Cities of Princes;** Those that are formed as a result of transferring a governor to a new capital such as Samara (Al-Mu’tasim’s capital) and Ruqawa (capital of Aghaleba) in Tunisia.
 - **Frontier Cities (Ribat):** Such as Ribat city in Morocco.
 - **Military Cities (Amsar):** Those are founded by Muslims directly after their conquests such as Koufa and Basra in Iraq.

Arab geographers record types of cities according to their functions and roles played as indicated hereunder:

- *Misr* (border) City: such as Baghdad, Koufa, Basra, Fustat and Cairo.
- *Qassaba* (borough) City: such as the *Qassaba* of Mansoura city and Anbar in Balakh near Jozjan.
- Fort City: of which there are two kinds:
 - Cities with a fort inside.
 - Cities inside a fort (fortified cities) such as Tuzar in Africa, Hura, Qafsa in Morocco, Tatas, Tulaytela, Gagrem and Ardabeel.
- *Fardah* (port) City: such as Eden, Akka, Damietta, Safaqis and Wahran.
- Royal City: cities built by Sultans for their own residences, family and guards. These include the cities of Baghdad, Wasit, Cairo, Askar, Qata'e, Mahdeya, Khurasan, Zahra'a in Andalus and Hamra Palace (a walled royal city near Ghernata).
- Public City: This city type derives its importance on account of its agricultural, commercial or professional production. In general, most Islamic Cities fall within this category.

The defect of over-using this doctrine to distinguish and label Islamic Cities is that it overlooks the multiplicity of functions, which can be done by each city. So, research on this basis would represent a measure of detachment of the city unity from its own Islamic identity and origin.

2.3.2 In Accordance to Their Date of Origin

This method distinguishes the city on the basis of its being either an ancient city or a more recent, newly fashioned one founded by demands of the Sultan or prince. Ancient cities here mean those cities that Muslims found in the countries they conquered and which they modified to conform to the philosophy of Islamic construction. With the passage of time, discrepancies between these and custom-built Islamic settlements have disappeared and old cities have become similar to new-fashioned ones in their general appearance and construction (see figure 2.6). New-fashioned cities built by Muslims were generally started as military camps before growing into cities specialising in commerce, agriculture, or becoming important harbours or military centres.

Thus, the ancient / new-fashioned distinction comes from the viewpoint of whether economic, political or social elements were the cause of foundation and continuation of the cities. The author considers this to be a false distinction which comes from new-fashioned cities that have

grown, developed and transformed through the ages and have become similar to ancient cities in the end. Examples of new-fashioned cities are Basra, Koufa, Baghdad, Wasit and Sheraz in Iraq, Fustat, Askar, Qata'e and Cairo in Egypt and Qerawan, Fez and Marrakech in Africa.

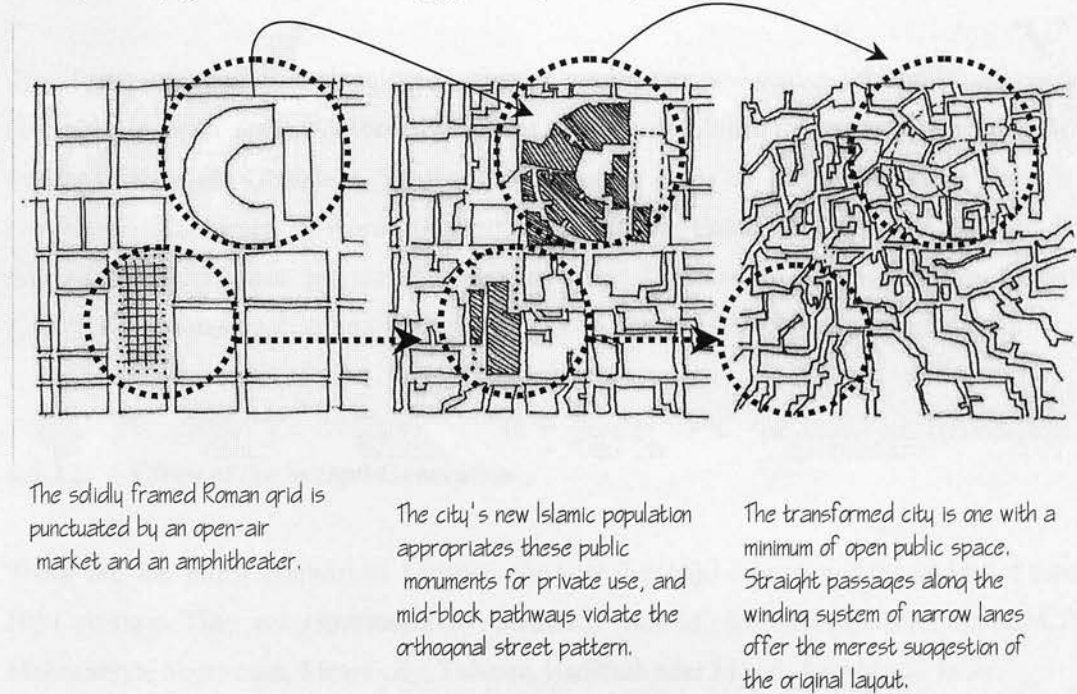


Figure 2.6 The Gradual Transformation of a Gridded Roman Colony into an Islamic City which had Become Similar to New Fashioned Ones (Source: Spiro Kostof, 1997, p.49).

2.3.3 In Accordance to their Chronology

This doctrine categorises the Islamic City as per its progress in time and its generations and needs, which changed its formation according to new functional conditions. Examples include cities that have developed as twin cities, such as Baghdad (a combination of Dar Al-Salaam on the West bank of the River Tigris and Karkh and Askar Al-Mahdi on the East bank), Rega and Ragega (adjoined across the River Euphrates) and Cairo (composed of Fustat, Qata'ie and old Cairo). This method is similar to the functional one, but a factor of time is added. Regarding generations of the Arabic cities through the period ended with crusades, they may be classified as follows:

2.3.3.1 Cities of the First Generation

These are the cities of the early first Hijri century. They include Basra, Koufa, Fustat, Qerawan, Ramlah, Mosul, Shiraz, Mansoura and Giza as well as the cities which were terminated and disappeared (known as aborted cities) of Gabeya and Kansareen.

The 'first generation' is distinguished in that it founded five new settlement centres and bases of assembly in open areas. All started as camps and then developed into cities. Conquering Arabs vitalised Basra for Obulah in South Iraq, Koufa for Mada'en, Mosul for Arbeel, Gabeya for Damascus, Kansareen in North Damascus for Aleppo, Fustat in Egypt for Babylon Fort, Qerawan in Africa and Manster (Tunisia) for Qartaj. They carried out this as if they wanted to monitor old centres by their new civil centres (i.e. to observe their fighting preparations).

2.3.3.2 Cities of the Second Generation

These are the cities established between the later first Hijri century and the middle of second Hijri century. They are represented by Baghdad, Rafe'aa, Manster (Tunisia), Maragha, Rai, Mahmadeya, Segelmasa, Moses city, Tabreez, Hadithah near Mosul, Rasafa and Tunis.

The aborted cities include Ain Jar, Hashimite Al-Anbar, Hashimite Koufa, Askar in Egypt, Qatul, Forts of Maseesah, Harouniya, Methqab, Rathan, Nozar and Malateya. Often, cities appeared merely because of a Sultans' wish and then vanished. For example: Gabeya, Qansareen and Ain Tamr in the middle of Beqa'a. Samra'a lasted only for fifty years. It was the capital of the Islamic world, but later turned into a desert. It was totally abandoned, even its palaces.

Cities of the second generation were distinguished as being cities for princes located in the middle of the state. Cities for the settlement of the common people were located at the edges of the state. They were generally stable and firmly established.

2.3.3.3 Cities of the Third Generation

The following cities appeared from the middle of the second to the late third Hijri century: these include Qata'ei, Faris, Rukada, Begana, Aqlam, Hajr, Tateelah, Tagier, Majreet, Zubaid, Tareef, Rahba, Hajr (Hassa), Wahan, Basrain, Morocco, Tunis, Heerah, Mubarak, and Mogadishu in addition to a number of forts.

Cities of the third generation are distinguished by the following:



- Emergence of the royal luxurious cities
- Emergence of the cities as salient trading centres with the group of ports which connected the Islamic world to India and the Northern coast of Africa to Andalus.

Dar Al-Hijrah is the only aborted city from this period.

2.3.3.4 Cities of the Fourth Generation

These cities include Cairo, Mahdeya, Marrakech, Rabat, Zaloul, Kasr Al-Folous, Tahrat, Marsa, Asheed, Mosa Al-Dajaj, Mahdeya (near Sala), Mahmedeya in Morocco, Zah'ra, Aghmat, Zat Al-Hamam, Zuwailah, Karbala, An Najaf, Meknasah, Mesila, Lamobatha, Mafia and Shangha.

Cities of the fourth generation were distinguished by the following characteristics:

- Most of them were located in Morocco
- They arose as the trading cities in East Africa
- Some were also founded in Iraq as Holy cities by the Shi'ite Muslims, who followed the Caliphate genealogy stemming from Fatima , the daughter of the Prophet , rather than the Rightly Guided Caliphs.

2.3.3.5 Cities of the Fifth Generation

These cities were founded at the beginning of the seventh Hijri century and include settlements such as Mansoura in Egypt, Salheya and Kark. Cities of this generation are distinguished by their military features. Later some of these cities emerged in the far ends of the Islamic world in such places as Timbuktu and Gana in Africa, Harar and Muswa' in East Africa, Sasaram, Haiderbad and Delhi in India in addition to cities of Malayo, Indonesia and Turkestan and other great cities in East and Middle Asia. An example of an aborted city is the City of Abu Anan ¹⁹.

¹⁹ Ibn Al-Khatib, 1987, p. 87, Ibn Al-Khatib, 1967, p. 43. See also Hussain Munes, 1976, p. 595.

2.3.4 In Accordance to their General Planning Basis

The author suggests adopting a fourth method for studying Islamic Cities. This method relates to their general planning bases on which they were founded and which represent the phenomena that now distinguishes them in their civil plans, images and utilities and public services which include public buildings, houses, roads and markets. This method has an added benefit because it incorporates the element of time in determining whether a city belongs to the first, second, third or fourth generation.

This supports the notion that the Islamic City is a civilised unit, primarily distinguished through the framework of Islamic construction, i.e., by transforming a specific concept which collects all cities in one definable group but which also separates them by their planning in accordance with characteristics that arose from particular functional advantages that lead to urban attributes unique to each city.

2.4 Ain Jar

The author would like end this chapter by calling attention to one very exceptional city founded by Muslims. It uses a Greco-Roman planning template. Such cities appeared only for a brief period of time. Only one example of this type is known - *Ain Jar*. Because we do not find this planning system repeated, nor any city equivalent to this one throughout history, it should be considered as being of secondary importance in the history of Islamic Cities. This city is mentioned in some history books that focus on urban places of the fourth Hijri century, but the author has not been able to trace any reference to its location, owner, or planning.

At the beginning of the second century during the era of Hisham, Ibn Abdul Malek (this may be a reference to Caliph Yazeed Ibn Abdul Malek, Hisham's brother), built a royal city for himself and his retinue and collaterals in Ain Jar, East of Shtoura in the Beqa'a valley.

The city was rectangular in shape and was surrounded by a fortified wall which had four gates located in the four cardinal directions; East and West in the direction of Damascus and Beirut and North and South in the direction of Ba'bak and Wadi Letani. Between each pair of opposing gates ran major streets leading to the city centre and crossing each other there (see figure 2.7).

This typology fully conforms to the Roman planning of cities such as *Cardo* and *Decomanus*. Out from the said two streets, all districts and suburbs of city branched in equal parts (literally

in quarters). The Mosque lay in the junction of the two streets with two palaces for the governor following them to the North and South across the straight street. On both sides of the two streets, there were columns and arches forming arcades which housed a chain of shops.

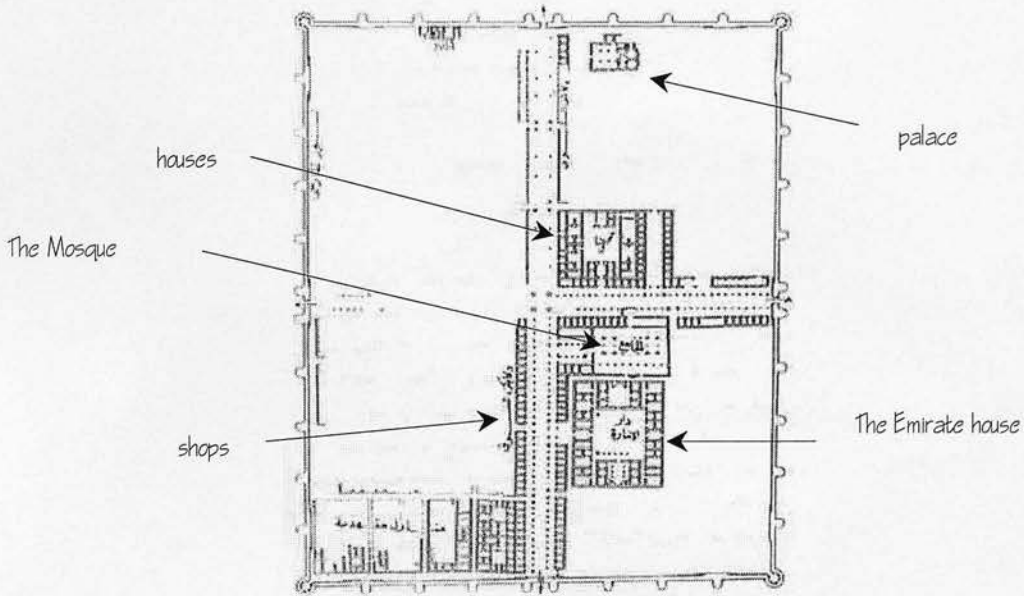


Figure 2.7 Ain Jar City (source: Shaker, 1981,p. 317).

In its axuality along ‘cardinal’ directions, its linkage to an ancient urban tradition, its explicit statement of an *imago mundi* and its highly regulated order, Ain Jar seems closer to many Western concepts of ‘the city’. It has therefore become of little importance in this study and has lead many Western writers to conclude that this model is ‘typical’ of ‘real’ or ‘unspoilt’ Islamic Cities.

2.4 Summary

The discourse of the Islamic City involves many perspectives and considerable research has been done in comprising its history, geography, economy and other related disciplines. The objective of most researchers was to extract aspects of the general appearance and urban development to lay down some general rules that would propose to explain mutual features of different cities. This attitude transfers the Islamic construction to another sector of the intellect, and this showed the author what was missing from discourse on Islamic Architecture and how this lead to a poor understanding of the traditional *Al-Amer*.

CHAPTER THREE

Preface

Who designed the Islamic City? Was it the community or only some people in authority? How was the Islamic City demarcated? Was its location scientifically chosen? Was it constructed by engineers? Was the local distribution of the population in the city region carried out through certain plans or did the population choose for themselves sites of their *Ihya'a* and demarcate their lands for themselves? Did the ownership of land contribute to the way the land was demarcated and then possessed?

This chapter tries to find an answer for the more dominant question above **who designed the Islamic City?** Therefore it deals with foundation and establishment of a number of Islamic Cities and focuses on the following points:

- Foundation of the cities from the first choice of their location, through successive stages of building and construction.
- The knowledge and decisions which created the distinctive shapes of Islamic Cities whether they were strategic decisions made by the governor or his deputy or minor decisions carried out by the population themselves. Which brought about the general formation of the Islamic City.
- The role of ownership and how it was applied to seize lands of the new cities in the level of the macro (rulers and authority decision) and micro (individuals) decisions.
- Thus, chapter three delves deeply into the foundation and origin of the Islamic City and the fundamental concepts upon which it is based. It puts various changes and events that have contributed to its morphology in chronological sequence. This part begins with Al-Madinah in Yathrib and follows through with an analysis of the first generation of such cities as Koufa, Basra and Wasit in Iraq and Fustat in Egypt. The chapter then examines the second generation of Islamic Cities, which include namely Baghdad as one of the most important cities of the second generation which scholars always refer to as a 'pre planned' city. These investigations revealed some important facts, which prompted the development of the next part of the study. This is in the section concerning the concept of ownership and the ways in which it impacted the traditional environment of the Islamic City.

Birth and Foundation of the Islamic City

The Case of Al-Madinah Al-Munawarah and the Emerging of the Ownership Concept

3.0 Introduction

Al-Madinah Al-Munawarah is the Prophet's city and the first city in Islam. After the Prophet's *Hijrah*¹ (immigration) to *Yathrib* (later *Al-Madinah* 'the city'), the Islamic City was born. In a space of ten years he turned it from being several close villages into one civilisational unit and hereby established the city concept. The Prophet ﷺ also set forth most of the principles governing the appearance of and institutions within, later Islamic Cities.

3.1 Yathrib before Al-Hijrah

Yathrib was composed of several housing clusters. Some belonged to the *Al-Aws* tribe, some to the *Al-Khazraj* tribe and some to the Jews. These gatherings were distributed in a plain of fertile soil, an oasis surrounded by volcanic traces (the city was located in a basin among extinct and dormant volcanoes. Black volcanic soil and igneous rocks represent much of its geological context). Fields and agriculture separated these housing groups. Some of them had towers (known in Arabic as *Atam*²) for protection. These towers, about sixty in number, were demolished by Othman Ibn Affan during his Caliphate (Al-Maqrizee, 1978, p.348). On the edge of these towers and therefore among them the markets were founded. Those built by the Jews were the most prominent ones (Shaker, 1981, p.302).

From this it is possible to construct an image of *Yathrib* as being scattered housing with fields and towers in between. *Yathrib* had a rural nature. Its people did not dwell in tents, but their houses were made of clay and stones. Some gatherings among the tribes took place in sheds

¹The trip from Makkah to Al-Madinah which the Prophet ﷺ made was later accepted to be the starting date of the calendar for the Muslims.

²The *Atam* is a construction of clay and stones in the form of a tower with some holes for defensive purposes.

(roofed places) known in Arabic as *Sakifa* (plural *saka'if*) where they met informally to discuss their own affairs. The Jews also had *Madrassa* (schools similar to synagogues) in which social and religious functions were mixed. The houses of *Bani Al-Najar* (the Prophet's uncles) were to be found in this oasis near to where the Mosque and the Prophet's house were later founded (see figure 3.1.1).

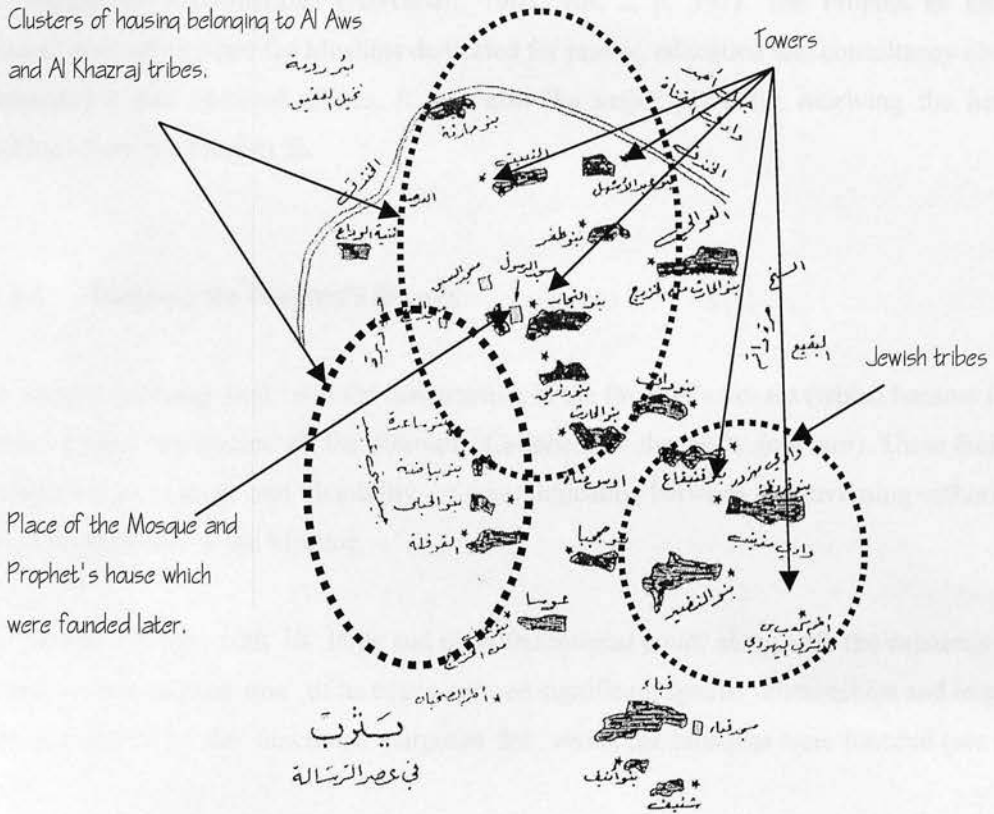


Figure 3.1.1 Yathrib before Al-Hijrah (Source: the Author Based Upon Shaker, 1981, p.301).

3.1.1 Stages of Change

At the beginning of the immigration of the Prophet ﷺ from Makkah to Yathrib he went to the houses of *Bani Al-Najar*, his uncles on his mother's side. Their centralised status among the city's tribes had the greatest impact on the determination of the new urban texture of the city (see figure 3.1.1).

3.1.1.1 Building the Prophet's Mosque and Houses

The Prophet ﷺ started the first urban construction work for Muslims in Al-Madinah by establishing a Mosque to the West of his uncles' houses: "*The site of the Prophet's Mosque and house was a stall for camels that belonged to two orphan boys of Bani Al-Najar in the care of Mu'az Ibn Afra'a. It included palms, sowing and graves. He cut the palms, spoiled the sowing and started the construction*" (Al-Tabari, 1963, vol. 2, p. 397). The Prophet ﷺ made his Mosque a meeting place for Muslims dedicated for prayer, education and consultancy about the community's and personal affairs. It was also the major place for receiving the heavenly teachings from the Prophet ﷺ.

3.1.1.2 Building the Prophet's Houses

The second building task was the construction of the Prophet's houses (which became in later Islamic Cities the houses of the Emirate, Caliphate or the city's governor). These facilitated freedom of movement and flexibility of communication between the governing authority and the public authority in the Mosque.

The Mosque design with its large and unroofed internal court, along with the existence of the Prophet's residence at one of its edges, offered significant special relationships and important interconnections of the functional purposes for which the Mosques were founded (see figure 3.1.2).

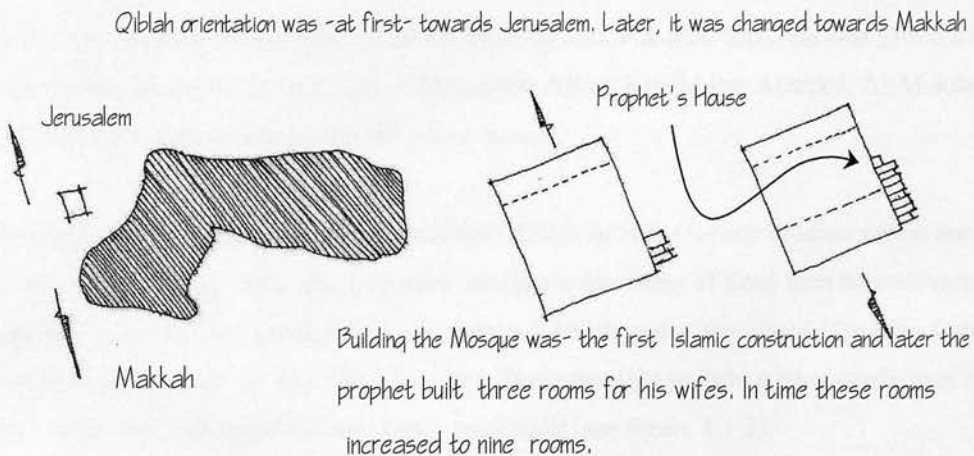


Figure 3.1.2 Building the Prophet's Mosque and Houses (Source: the Author).

3.1.1.3 Publishing the Declaration of Principles or 'The Paper'

The law governing the relationships of the new society was known as 'The Paper', which was later called 'The Constitution of the City'. This document outlined how *Al-Muhajireen* (the immigrants from Makkah) and *Al-Ansar* (the Muslim people of Al-Madinah) fraternised and associated with one another.

3.1.1.4 Distribution of Houses and Lands among Immigrants

By declaration of the principal of *Ihya'a*, the original inhabitants of Al-Madinah gave the Holy Prophet ﷺ those tracts of dead, waste and inhabited lands that they owned as well as houses as a gift. For instance, Haretha Ibn Al-Nu'Oman, granted the Prophet ﷺ his houses and *Khitta'at* (settlement areas demarcated and fenced by, for example, walls, stones or other system of delimitation, *Al-Khitta'a* (Plural *Khitta'at*) could include some unbuilt areas within its boundaries) to be distributed among their immigrant brothers (Yaqout, 1990, vol.5, p.86).

With the increase in immigrants, the Prophet ﷺ granted them *Khitta'at* in sequence to use and construct houses. He also made borders for the people of Bani Zahra (a tribe) at the back of the Mosque. Thus Abdullah and Otba, the two sons of Masoud Al-Hazleyayin, were granted land near the Mosque, Al-Zubair Ibn Al-Awam was gifted a large piece of land measured by the extent of his horse's running. This gave him sufficient dead land in which he built six houses and an empty court that was not even fully inhabited after a hundred years.

Talha Ibn Obaidullah was also given his building site. For Abu Bakr, he was gifted a house site next to the Mosque. In addition, Othman Ibn Affan, Khalid Ibn Alwalid, Al-Mekdad and Al-Tufil were given property for building their homes.

However, *Iqta'a* (granting) of the inhabited *Khitta'at* and *Al-Amer* (places which are inhabited or cultivated) along with the principal of *Ihya'a* (reviving of dead land by cultivation or, if it was not possible, by construction, as detailed later), were the most decisive factors which affected the concept of the Islamic City. These brought to light a completely new concept of ownership which changed the way cities were built (see figure 3.1.3).

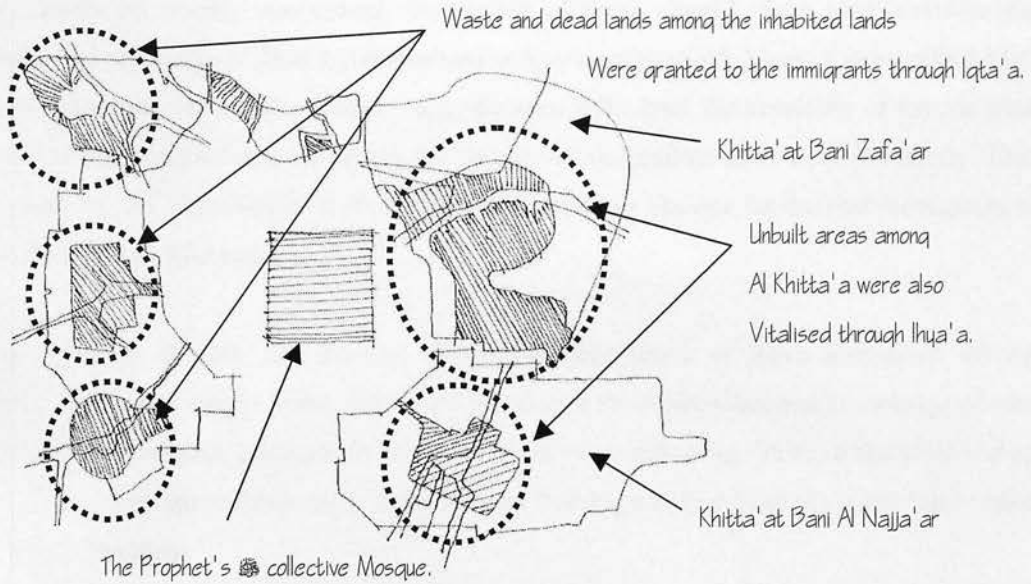


Figure 3.1.3 Distribution of Houses and Lands Among Immigrants (Source: the Author).

3.1.1.5 The Constructional Effect of Reformulation of the City Environment

As previously mentioned, one can conclude that: the first act of construction in Al-Madinah was the collective building of the Mosque. Attached to its East flank was the Prophet's ﷺ house. Immigrants built their houses around this new centre of Yathrib, spreading out once, People of Yathrib gave the Prophet ﷺ the lands which water could not reach (water was accessed through wells dug down to underground watercourses. Thus was dead land vitalised into agricultural land and drinking in the house), therein the Prophet ﷺ distributed these lands among the immigrants (Ibn Salaam, 1975, pp. 357,358).

3.1.1.6 *Iqta'a* (Granting), *Ihya'a* (Vitalisation) and *Al-Khitta'at* (Territories) in Al-Madinah

Many *Khitta'at* such as the *Khitta'a* of Bani Hozeel, Bani Mauzayna, Juhaynah, Bani Omar, Bani Al-Layth Ibn Bakr, already existed in Yathrib. These included smaller *Khitta'at* for communities and families rather than entire tribes. Yet smaller *Khitta'at* included dead or

inhabited lands that lay amongst those which had been gifted by Al-Ansar to the Prophet ﷺ to be distributed among immigrants. Ownership of these unused, dead lands could be realised under the principle of *Ihya'a* (vitalisation) or *Iqta'a* (allocation). Sizes of these gifted *Khitta'at* were governed by certain factors, e.g., the area of the land, the capability of the one who was entitled to a piece of land for *Ihya'a*, the number of his children and size of the family. This was evident in the distribution of sites around the collective Mosque for the first immigrants and in *Al-Khitta'at* of Al-Ansar.

The Prophet ﷺ did not interfere in the sub distribution of these allocations among the individuals of a single tribe. He left this action to their discretion and knowledge of what the tribespeople needed. Individuals from different tribes adjoining *Khitta'at* therefore had to rely on inter-tribal agreements as a step towards forming a united Islamic society based upon one tribal community.

By virtue of the constant human immigration to Al-Madinah and the allocation of lands around the collective Mosque to be built upon them as per the Prophet's planning decisions which concentrated one tribe to each site, the built area began to increase inside its boundaries, houses attaching themselves to one another. The character of Al-Madinah became more dense and compact, at the end forming the urban fabric that has become typical of Islamic Cities.

3.1.1.7 Role of *Ihya'a* as a Basic Principle of Land Ownership

Due to the pressure of the population in Yathrib and the people's incessant desire to increase construction and cultivation, the Prophet ﷺ brought forth the tradition of *Ihya'a* for dead lands saying if one vitalised a dead land, it will be his and if one reclaims a land not belonging to anyone, it will be entitled to him (Al-Sayed Sabiqh, 1983, vol.2, p. 194). This resulted in the establishment of laws which totally changed the concepts of construction at the city level and led to the emergence of the rights and rules that are discussed in later chapters.

Construction consequently increased and housing assemblies grew denser until they adjoined each other to form the compact urban texture repeated throughout the urban Islamic world.

3.1.1.8 Foundation of the Public Market and the Principal of Market Seats

As every tribe had its own market next to its *Khitta'a*, the Prophet ﷺ gathered them all in one market in a location he had chosen to the South at the far end of the place of Al-Zubair Ibn Al-Awam³. The market of Al-Madinah was an open courtyard until the age of the Rightly Guided Caliphs, when tents were put up and rules of the market seats were adopted⁴. The first construction took place at the beginning of the Caliphate of Muawiya Ibn Abi Sufian.

3.1.1.9 Monitoring of the Markets and Streets

The Holy Prophet ﷺ prescribed the tradition of monitoring the markets by passing by the market and following the teachings of Islam in commercial dealings. The Prophet ﷺ authorised Omar Ibn Al-Khattab ؓ to monitor the market. After the conquest of Makkah (8 / 630) he appointed Sa'ad Ibn Saeed Ibn Al-Ass ؓ as *Al-Muhtassib* (one appointed by a Muslim ruler to enjoin what is right and to forbid what is wrong in markets and streets) for the markets and streets of Makkah. In this manner, the system of control of transactions and general behaviour in public being supervised by *Al-Muhtassib* was introduced into the Islamic City (Al-Tabari, 1963, vol.3, p.223). Among the responsibilities of *Al-Muhtassib* was the setting aside for some places in the market for slaughtering. They were placed at the end (Yaqout, (n.d), vol. 5, pp. 202, see also Abu Youssof, 1979, pp. 63-65, Al-Mawirdi, 1960, p. 181).

3.1.1.10 Setting out the Rules for Main and Secondary Roads

The increase of construction and attachment of houses led the Prophet ﷺ to formulate the general and private rules of the roads, methods of their maintenance and preservation against public misuse. These He ﷺ applied to all roads, whether they were major ones connecting the residential quarters to the Mosque, trading streets going into the city from North to South, or minor roads between dwellings. The width of the great road, which connects the Prophet's Mosque and *Eid* (Feast) prayer place, was set at 10 cubits (5 metres) (Samhodi, 1954, vol.2, pp.725, 732, 735). However, minor roads between houses and dwellings were half the above-mentioned width or less (see figure 3.1.4).

³ Ka'ab Ibn Al-Ashraf, the Jew, cut the tent wedges placed for the market. The Prophet ﷺ transferred them to North of Madinah and said, "*This is your market, so it should not be narrowed and no tax should be collected*" (Ibn Sayed Al-Nass, 1980, vol.1, p.351).

⁴ Rules concerning market seats are covered in detail in Part Three, Chapter Eleven.

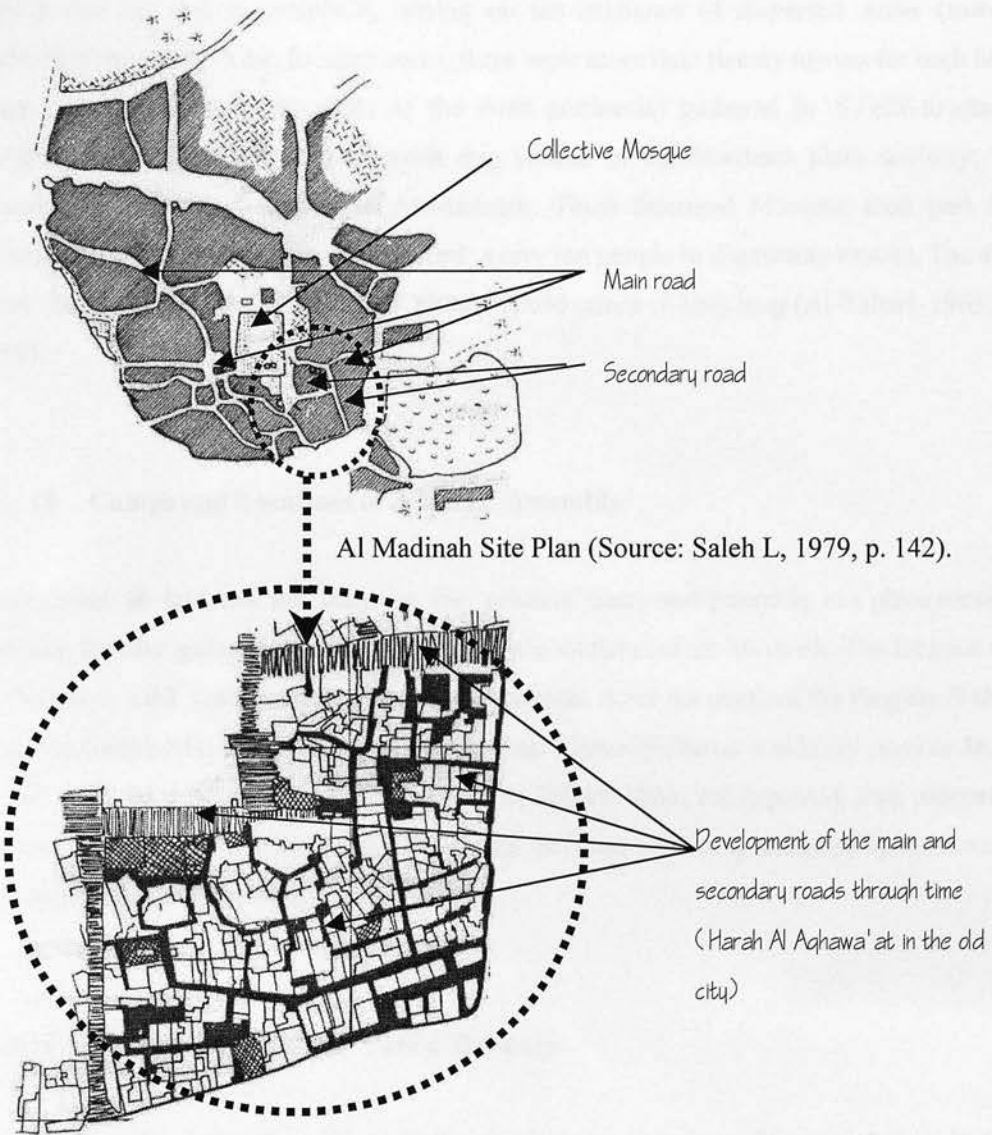


Figure 3.1.4 Setting out the Rules for Main and Secondary Roads (Source: the Author Based on Saleh. L., 1979, pp.143, 145).

3.1.1.11 Setting Places for Latrines

Some places for latrines were established and known as *Manaséi*. It is worth mentioning that those built for women were in a separate place and they were only used at night⁵.

3.1.1.12 Fortification and Security

⁵This was a custom of the society benefiting from the night as providing a veil against being observed by others.

Yathrib had no wall to protect it, relying on the existence of dispersed *Atam* (towers) as established by each tribe. In some cases, there were more than twenty towers for each housing group. When *Al-Ahzab* (the tribes of the Arab peninsula) gathered in 5 / 626 to attack Al-Madinah, the Prophet ﷺ had a trench dug behind in the Northern plain territory, which represented the only entrance to Al-Madinah. Three thousand Muslims took part in this construction. The Prophet ﷺ commanded every ten people to dig twenty metres. The digging lasted for 34 days. The trench was almost 12000 cubits (6 km) long (Al-Tabari, 1963, vol.2, p.568).

3.1.1.13 Camps and Locations of Soldiers' Assembly

The Prophet ﷺ laid out the plan for the soldiers' camp and assembly in a place outside Al-Madinah for the gathering of Osama Ibn Zaid's soldiers before his death. The location was in the Northern cliff (called *Al-Gorof*) of Al-Madinah. After the death of the Prophet ﷺ the first thing the Caliph Abu Bakr did was to declare that: "*None of Osama's soldiers stays in Madinah but all must go out to his camp in the cliff*" (Al-Tabari, 1963, vol.2, p.481). This indicates that all military camps were not inside Al-Madinah. Soldiers were only stationed inside the city for civil ceremonies and gatherings.

3.1.1.14 Founding of Muslims' Public Treasury

The riches of Bani Qay-Nuqa'a constituted the first money to be collected and deposited in the public treasury. The Prophet ﷺ delegated special people to collect alms from the people in various regions that believed his message (Al-Tabari, 1963, vol.2, p.481). These funds were kept in the Mosque before being distributed among those deserving of them. The governors of Al-Madinah later adopted this tradition and erected special treasury buildings to keep these funds.

3.1.1.15 Councils of Feasts and Parades of Celebrations

The Prophet ﷺ demarcated a prayer place for feasts in the open-air courtyard outside the walls of the Mosque. From the second year / 624, a man was assigned to walk in front of the Prophet ﷺ on days of *Eid* and carry an *Etraa* (a stick similar to the short spear). This tradition later

perpetuated a custom dating back to the age of the Abbasid Caliphs in their parades of crown princes.

3.1.1.16 Councils of Jurisdiction and Resolving Disputes

Councils were held at the Mosque as the Prophet ﷺ acted as judge among people and resolved litigations and disputes.

3.1.2 Conclusion

- Accordingly, Al-Madinah became the first model city for all Muslim rulers in later times. It became the Mother City for all Islamic Cities, since it was their prototype and earliest example. It left a strong imprint on Arab camps and the centres of conquering armies, which later grew to be cities. Thus in the Persian frontier there were Basra and Koufa, in the Al-Sham region (now Syria, Palestine and Jordan) there were Jabeya and Kansareen, in Egypt there was Fustat (a development of the Fustat army camp) and in Tunisia there was Qairawan. These six camps represented the prototypes for the first group of Islamic Cities.
- In addition the case study of Al-Madinah suggests some categories and factors that shape urban form and fabric. We can note that the dynamic operative decision making process operating was primarily based on those of rulers and citizens. Rulers' decisions were top-down in nature, creating (in most cases, as is experienced in other Islamic Cities), a 'planned' effect on the urban fabric. For instance, by initiating a *Jami* (a Mosque), a *madrasa* (a school) or extending a road *Tareeqh Al-Muslimeen* (the public road) or demarcating the place for *Al-Souqh* (the central market). In other words, these decisions had very direct effects in the shape of the city and consequently the concept of ownership.
- The top-down decision of the rulers to build a *Jami* or to extend a road was the responsibility of the governing council, but it did not imply that they owned these features. The people were the real owners of such structures, but, being a public domain, the measure of ownership was incomplete and restricted to the utility or the usage of the property rather than the thing itself. This had great importance in regards to the built environment, a point the author expands in the following two parts of this thesis.

- The other type of decisions relates to citizens. These were of a bottom-up (micro) nature with less discernible effects than the decisions of rulers, but their aggregate impact on the city was ultimately more significant. These decisions were made by the virtue of the land's ownership as derived from the Prophetic Hadith "*the land is the land of Allah and the people are the people of Allah, so whom ever vitalised a dead land then it is his*" (Sakher, 1966, no. 2672). That Hadith was the main factor, which gave birth to new building concepts in local urban areas with specific rules and rights that came out of land possession.
- By the virtue of *Ihya'a* and its related rights, the urban city fabric was formulated. Through the accumulation of decisions made by the inhabitants the houses were built more closely together and, over the passing of time, they joined one to another, establishing a pattern that urban Muslims repeated all over the Islamic world. The different stages of change, which Al-Madinah underwent within ten years, experiencing *Ihya'a* and *Iqta'a* and the principals derived from them like rights of *Al-Irtifaq* (easement), *Al-Hareem* (allocated areas outside the building), *Al-Hemaa* (the protected places) and the right of *Al-Darar* (no harm no jeopardy) gave a solid basis for establishing cities later on.

First Generation Cities

The Case Study of Basra and the Ownership Concept

3.2 City Of Basra (14 / 635)¹

3.2.1 Selection of the Location

The city of Basra was founded by Ottba Ibn Ghaswan in 14 / 635 (Al-Tabari, 1963, vol.3, p.590) and was the first constructed city of Islam after the city of the Prophet ﷺ. Therefore, it inherited many Islamic features directly from Al-Madinah. The narrations describing the way the location was chosen make it clear that the place was not chosen as a site for a new city, but as a camp for soldiers, which later on became a centre for all the armies going off to fight. Gradually Basra evolved into a city.

“Omar Ibn Al-Khattab, the Caliph, sent Ottba Ibn Ghaswan to help conquer Persia. Ottba went down first to the beach of the island where he stayed for sometime. His soldiers complained about this location to Omar who commanded them to change their settlement” (Al-Tabari, 1963, vol.3, p.592). The advice of the Caliph was *“Gather people in one location and do not separate them”*. He then commanded Ottba to go to the farthest end of the Arabic desert that was nearest to the Persian countryside. Following the Caliph’s advice, Ottba settled in Basra. He then invaded and conquered Ayala less than a month afterwards and then returned to Basra and seized it (Al-Tabari, 1963, vol.4, p.43). Upon seizing new locations, Ottba’s men began to build permanent settlements. *“When delegations of Arabs came to Basra, they asked the Caliph if they could construct houses from reed instead of tents. He allowed this, so people of Basra [and Koufa] used reeds for their buildings”* (Al-Balazri, 1987, p.338).

The previous quotations suggest that the location of Basra was primarily a site for a camp. It was not pre-planned nor designed to be a permanent settlement, let alone a city.

3.2.2 Planning, Demarcation and Development of the City

¹ A complete Islamic Calender for both Hijiri and Gregorian dates is provided in the Appendices.

From its origins as a military camp to being a city, Basra went through five stages over a period of 12 years or less.

3.2.2.1 First Stage (14 / 635)

At this time Basra consisted of tents with no advanced constructions. Accordingly, Ottba Ibn Ghaswan wrote to Omar the Caliph that Muslims should be provided with a dwelling to stay in during the winter and a place to live upon completing the invasion. The Caliph approved and Ottba chose the location previously mentioned (Al-Balazri, 1957, p.452).

3.2.2.2 Second Stage (14 / 635)

In this stage of construction, people used reeds for building because of its availability. The Mosque was built of reeds, as was the *Emirate House* (the house of the leader or the prince) in the *Rahba* (a large open area in the centre of the camp usually beside the Mosque). If attached to a group of people or a tribe, it became the open space related to them and to their place of settling. The prison and the *divan* (the council and the public registry office) were built in the *Rahba* of the Hashim tribe. When the soldiers went on their military campaigns, they dismantled the reeds and wrapped and arranged them for re-construction upon their return (Al-Balazri, 1987, p.425) (see figure 3.2.1).

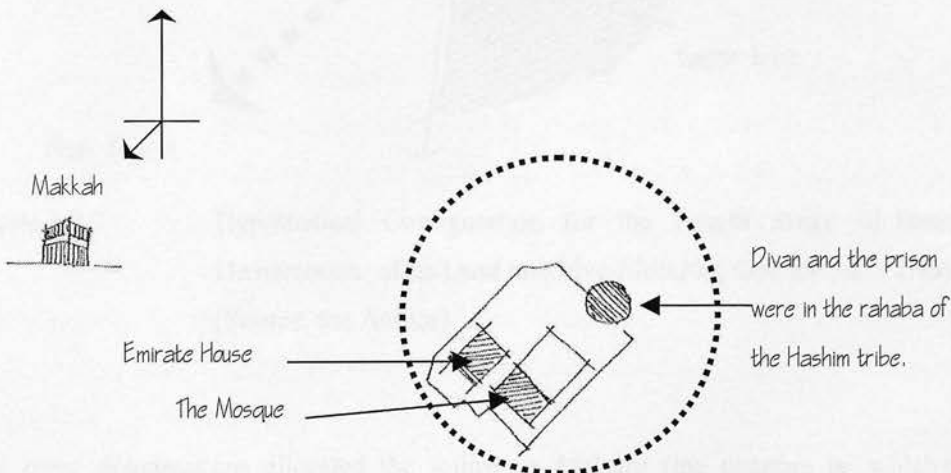


Figure 3.2.1 Possible Reconstruction of the Second Stage of Basra (Source: the Author).

3.2.2.3 Third Stage (14-16 / 635-637)

This is the stage of construction using unfired green bricks, clay and wooden roofing.

3.2.2.4 Fourth Stage (17-29 / 638-649)

As a result of disputes arising amongst different tribes residing in the undifferentiated area of Basra, Abu Mosa (the leader) established certain demarcated lands, *Khitta'at*, for every tribe. He then encouraged the people to build on their land with the result that Basra was composed of five contiguous segments, one for each tribe or group (see figure 3.2.2.).

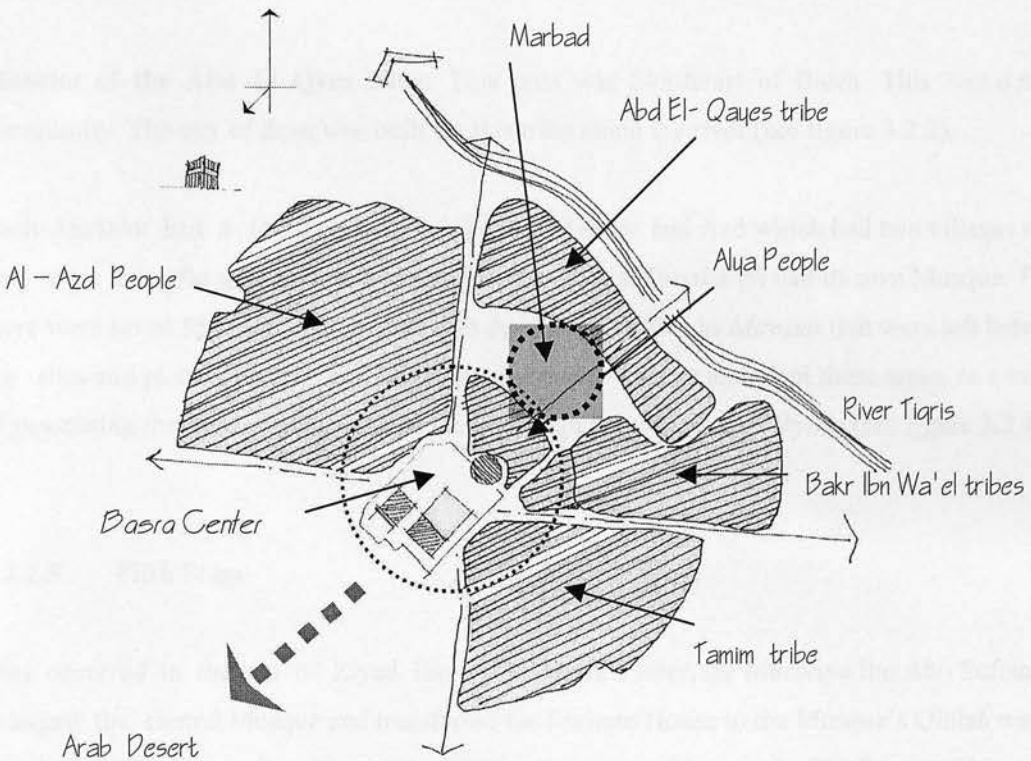


Figure 3.2.2 Hypothetical Configuration for the Fourth Stage of Basra and the Demarcation of its Land into Five *Khitta'at*, One for Each Tribe or Group (Source: the Author).

The tribal demarcations allocated the following *Mahelat* (the quarters in which the people settled, plural of *Mahele*) as follows:

***Mahelat* (Place) of the Alya People:** This was located in the heart of the city between the *Marbad* (camel market) and the Mosque. Most of the Alya people who lived there were from Quraish and immigrated to Basra before the year 40 / 660.

Mahelat of the Al-Azd People: From Northwest of Basra came the Yemeni tribes of Aseer and Oman. Since they were among the largest tribes they seized the largest *Khitta'at* in the city.

Mahelat of the Tamim tribe from Mudar: This tribe settled in the Southeast part of the city. The Tamim tribe was second after Al-Azd in number and was itself divided socially between Darem and Hanzalah (two groups inside the tribe were composed of smaller number of families called *Fakhez* and *Baten*).

Mahelat of the Bakr Ibn Wa'el tribe: This area was located in the middle part of the East and Northeast Basra. Its residents included the tribes of Rabia, Sadoos and Zohal.

Mahelat of the Abd El Qyes tribe: This area was Northeast of Basra. This was a naval community. The city of Zurq was built for this tribe along the river (see figure 3.2.2).

Each *Mahelat* had a *Dasskarah* (village) except Tamim and Azd which had two villages since they were of a far greater number than the others. Each *Dasskarah* had its own Mosque. Thus, there were seven Mosques. There were also dead lands known as *Mawaat* that were left between the sites and plots of each tribe. The settlers hurried to vitalise and plant these areas, as a means of possessing the right of ownership to them through the principal of *Ihya'a* (see figure 3.2.3).

3.2.2.5 Fifth Stage

This occurred in the era of Ziyad Ibn Abih, Basra's ruler, for Muawiya Ibn Abu Sufian. He enlarged the central Mosque and transferred the Emirate House to the Mosque's Qiblah wall so that he could go out directly to the Qiblah and pray with people. The Emirate House was attached to the Mosque during the era of Al-Rasheed (Al-Balazri, 1987, pp.428-429). There were at this stage seven official premises in Basra: the Emirate House, Al-Bayda'a Palace which is the palace of Ziyad Ibn Abih, 'Aws' Palace near *Marbad*, Seneel's Palace, Essa Ibn Ja'afar's Palace, Ghadban's Palace in Bani Bakr and the Al-Zaid House (for Bahraini traders) (Massignion, 1920, pp.28-29).

The building construction multiplied and extended in the direction of the water. Near the desert gate was the Friday (Al-Joma'a) Mosque which was soon no longer in the middle of the city because of its rapid expansion. Thus, the city was required to construct new Mosques (as per Al-Maqdisi's saying: "One in the market area and the Mosque of *Alafeen* at the sea edge").

Al-Hajaj Ibn Yusef Al-Thakafi demolished the Emirate House, which was built by Yazeed. The building materials of the Emirate house were used in constructing other dwellings and gates and not thrown away. This follows the principle of Islamic Law known as *Al-Loqata*, which directly helps to maintain the traditional and physical environment.

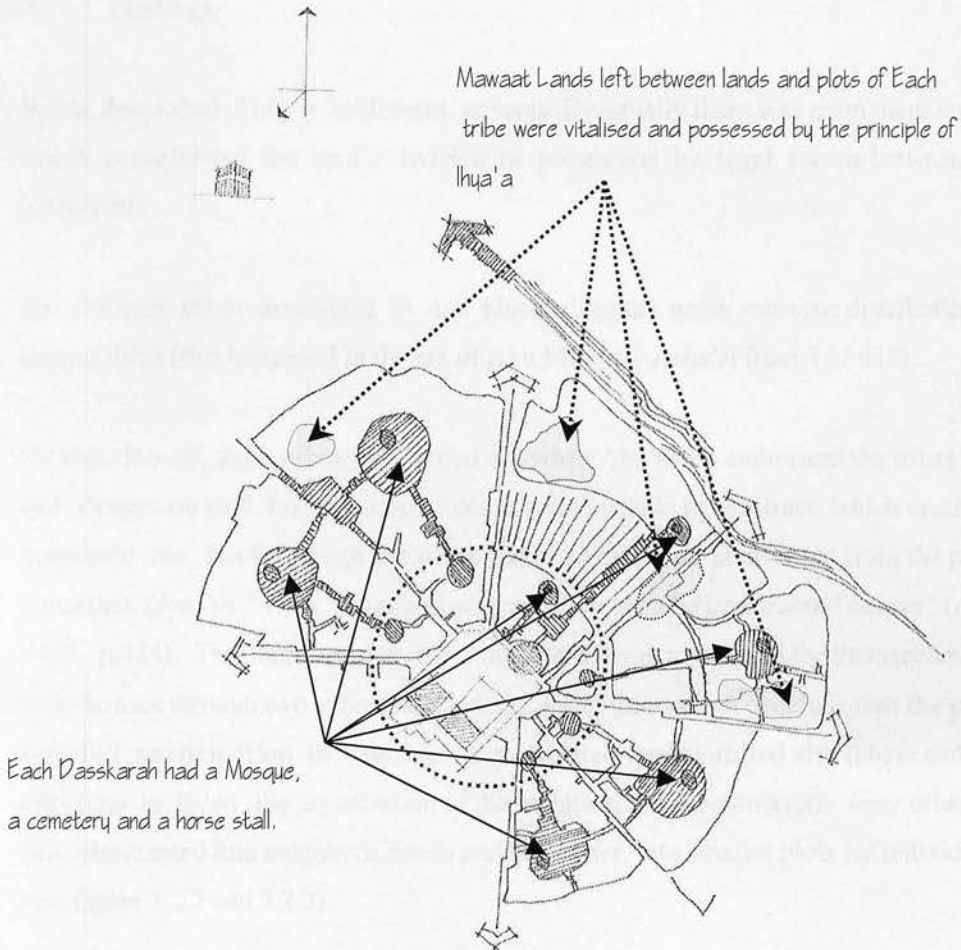


Figure 3.2.3 Development of Basra and the Ownership of Lands by Vitalisation of *Mawaat* (Dead Land) through the Principle of *Ihya'a* (Source: the Author).

3.2.3 Area and Population of the City

How big was Basra? According to Yazeed Ibn Al-Dishik, "*Basra... was measured and found to be two leagues long by two leagues wide [approximately 10 km x 10 km]*" (Yaqout, 1990, vol.1, p.515).

Population of Basra as Al-Waleed Ibn Hisham said, "...that the ruler of Divan of Basra soldiers said: 'I checked the Arab warriors at Basra through the era of Ziyad and I found them to be 80 thousand and their children were 120 thousand'" (Yaqout, 1990, vol.1, p.517).

3.2.4 Findings

- Basra developed from a settlement of tents. Eventually there was permanent construction which consolidated the land's division or possession by legal means between tribes and individuals.
- As different tribes assembled in one place, disputes arose over the distribution of lands among them (this happened in the era of Abu Mosa Al-Asha'ri from 17 / 638).
- Distribution of these tribes was carried out when Abu Mosa authorised the tribes to occupy and demarcate land. Immediately he commanded people to construct, which meant that **they possessed the land through the principal of Ihya'a**. This is different from the principal of allocation (*Iqta'a*) "*Then, people demarcated lands and constructed houses*" (Al-Balazri, 1957, p.484). This tells us that the inhabitants demarcated land for themselves, then built their houses through two subsequent actions. From this we can conclude that **the population had full participation in decisions that formed the inhabited city fabric** and that these decisions included the organisation of the inhabited area known as *Al-Amer* urban land was first demarcated into neighbour hoods and then, later, into smaller plots for individual houses (see figure 3.2.2 and 3.2.3).
- This was carried out by agreement of the population who had the right to decide and choose instead of following the orders of the ruler, the Caliph or the Prince. In fact **the authority did not interfere in the demarcation of the Khitta'at** of the inhabitants. There were five *Khitta'at*, primarily distributed on the basis of the tribe, all around the Mosque, Emirate House, yard and the central market. Still each *Khitta'a* had at least one *Dasskara* and within each a Mosque was built (see figure 3.2.3).
- The connection of houses was an evident characteristic of the general urban shape but only under the agreement of all parties. The yard available in the middle of every demarcated land was devised to satisfy distinct functional requirements, such as the need for a cemetery and horse stable.

- People were keen on planting on dead lands. **This activity eventually proved possession and ownership of the dead land** by virtue of occupying it and turning it into a fruitful area through planting.
- The width of the main street and its *marbad* was 60 cubits (30 m). Other streets were 20 cubits (10 m) wide. Every alley was seven cubits wide (see figure 3.2.4).
- In Al-Mawardi's wording, there was a reference that the typology followed a hierarchy of functions since the market street, which also served as the main street to the city, had to be the widest (see figure 3.2.4).
- *Al-Asawerah* (a tribe of people who embraced Islam and came after the fifth stage of the founding of Basra) inhabited Basra but their lands were demarcated for them. "*Then their lands were demarcated for them so they settled and dug their river known as Al-Asawerah river*" (Al-Balazri, 1957, p.366).

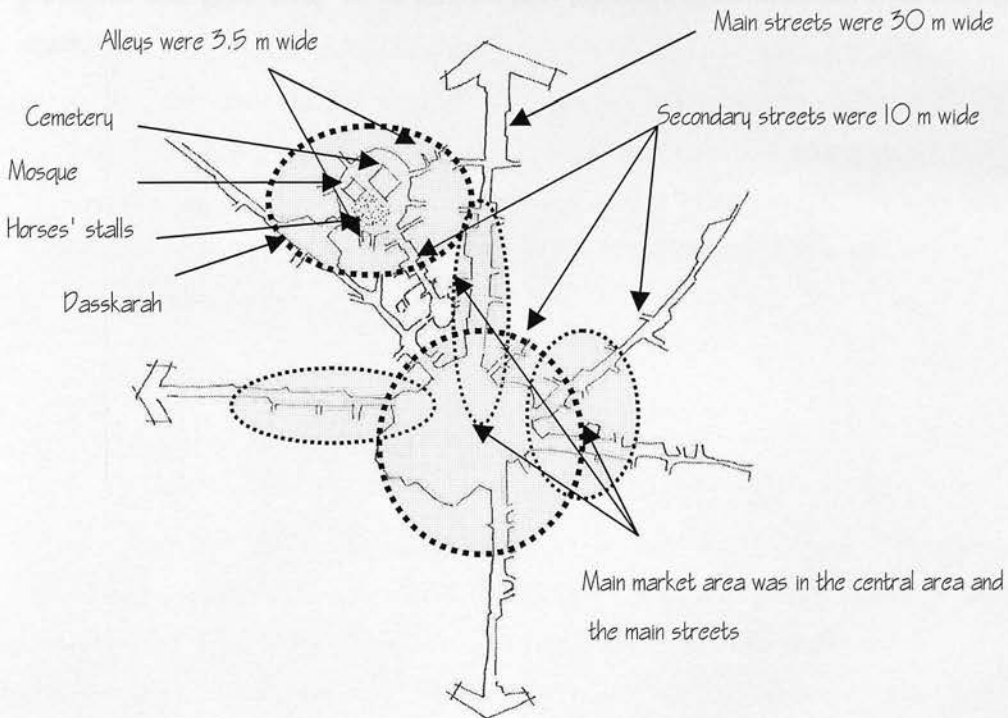


Figure 3.2.4

A Hypothetical Construction for the Street Hierarchy in Basra and the Main Market Area (Source: the Author).

- Public construction using materials left over from the demolition of the Emirate House followed the environmentally beneficial principle of *Al-Loqata* which implies: finding and re-use of neglected environment materials, not owned by anyone, for re-construction.

3.2.5 Conclusion

- The role of *Ihya'a* as a main factor of ownership was evident as it was the means of possessing lands during the formation of Basra. Other types of land possession like *Iqta'a* (the allocation of lands to groups or individuals) was not the method which applied to the plots in Basra.
- The urban fabric of the inhabited area of the city was formulated through the micro decisions made by the inhabitants without any interference from higher authority since it had no right to decide how the inhabitants should plan their plots or design their houses or locate internal streets (cul-de-sacs). This concept, which came from Islamic ownership rights and principles and gave birth to the formula later produced in the inhabited areas known as *Al-Amer*.

The Case Study of Koufa and the Ownership Concept

3.3 City Of Koufa (15 / 636)

Several different narratives about Koufa agree that the city began in 15 / 636 after the building of Basra in 14 / 635. Abu Obaida takes exception to this and states that the formation of the city was in 18 / 639 (Al-Tabari, 1963, vol.4, p.40).

3.3.1 Selection of the Location

The five narratives provided by Al-Tabari about the establishment of Koufa were based upon climate. Omar the Caliph instructed the Arab conquerors to look for a location to settle in after they had conquered the Iraqi plain and its cities (Al-Tabari, 1963, vol.4, p.40). He asked Sa'ad to select a location with no sea, river or a bridge between him and them. Accordingly Sa'ad sent Hozayfa Ibn Al-Yaman to the East of the Euphrates and Salman Ibn Rabee'a Al-Bahli to its West until he reached the city of Al-Anbar. Sa'ad wanted to take it as a shelter but the army complained about mosquitoes, so he shifted to another place, which was also unsuitable. Therefore, he turned into Koufa, which was healthier than Basra (Al-Balazri, 1957, p.338, Al-Tabari, 1963, vol.4, p.41).

3.3.2 Historical Description of Establishment of Koufa

Al-Balazri narrates: *"Omar Ibn Al-Khattab wrote to Sa'ad Ibn Abi Waqas commanding him to make an immigration house for Muslims and form a Kayrawan [camp] with no water feature separating them [Omar and Sa'ad]. So, he came to Al-Anbar and wanted to take it as a house, but people complained about flies. Therefore, he went to another place that he also did not find suitable. So, he turned to Koufa which he demarcated, allocated houses for people, made tribes take houses and built its Mosque in the year 17 / 638"* (Al-Balazri, 1957, pp.385-386).

"Sa'ad Ibn Abu Waqas conquered Mada'en and his soldiers took it as a camp, but they fell sick there. Omar wrote to Sa'ad requesting that he transform it into Hakmah market but they

suffered from the mosquitoes. So, Sa'ad wrote to Omar informing him that people had been harmed by mosquitoes. Omar then ordered him to provide his men with a good place but not one that would separate him from them by any water feature" (Al-Balazri, 1957, p.386).

"Abdul Meseeh Ibn Bakeelah came over and told Sa'ad: "I will let you know about a land at a high altitude and, so he informed him about the location that today is called Koufa" (Al-Balazri, 1957, p.387, 388).

Al-Tabari narrates: "Omar wrote that Arabs did not feel at ease except in places suited to the camels of their countries. Therefore, he sent Salman and Hothayfa, the army majors, to settle in a place that had neither a sea nor bridge to separate them. Salman went out until he reached Al-Anbar then continued West along the Euphrates until he came to Koufa. Hozayfa went East along the Euphrates till he became satisfied with Koufa and both admired the place" (Al-Tabari, 1963, vol.1, p.41).

Accordingly one can deduce that the first decision carried out by Sa'ad was the location of Koufa after he and his soldiers were affected by diseases *en route* to Mada'en. Caliph Omar Ibn Al-Khattab defined the advantages of that location in respect of water and desert: "A good place with no water feature between us". The Location of Koufa has fresh air and excellent landscape for monitoring since it is located on high ground.

All former decisions were centralised under the Caliph's command. His officer Sa'ad ordered others to select the Koufa location. Thereafter, he laid out Koufa and allocated places for houses for people. This leads one to ask: how was this demarcation carried out? Did Sa'ad decide it by himself, or upon consulting knowledgeable people? Further, how were decisions regarding planning of the city made after its location was chosen? Did each tribe (of which the army was composed) choose its territory and demarcate its external borders or were they given fixed locations? Were the territory borders determined by agreement with neighbouring tribes? All these questions were resolved in the planning of Koufa.

Al-Tabari indicates: "After demarcation of the Mosque, a man shot an arrow to the right and commanded that building should take place beyond the location of the said arrow. Then he shot arrows in front and behind him and commanded that building could only happen beyond the two arrows' locations. He left the Mosque in such a way that it was not surrounded by anything and build a shed at its front which had no houses. The square area was designed for meeting of people as to avoid crowding" (Al-Tabari, 1963, vol.1, p.44-45). Al-Athari indicated that the

distance of the arrow was 55m, whereas Qulwa or Gholwa became afterwards a measurement unit equal to 1 / 25 of a league (192m) (Shaker, 1981, vol.1, p.354) (see figure 3.3.1).

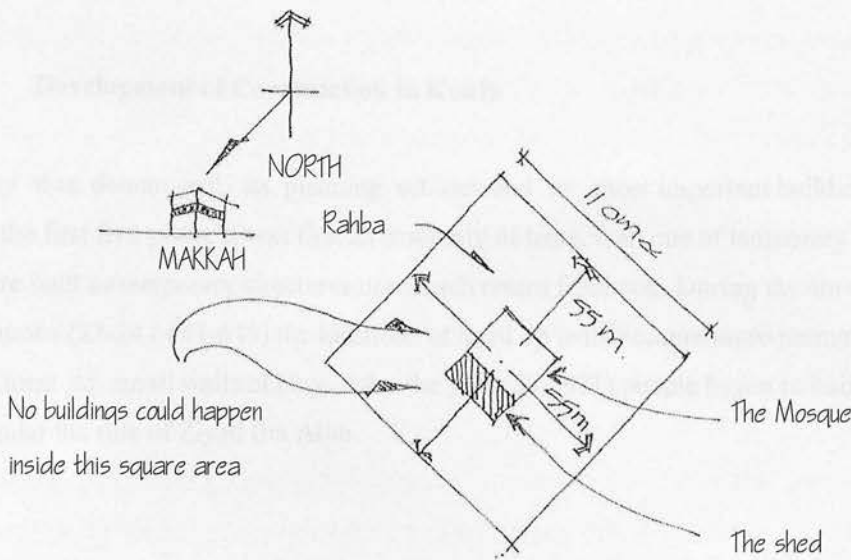


Figure 3.3.1 Demarcation of Koufa Mosque According to Al-Tabari's Narrations
(Source: the Author).

3.3.3 Advantage of the Location

Koufa stands at the edge of the *Badeya* (desert) with planted countryside on the other side. Its location is larger than Al-Anbar and Al-Mada'en (other two places through which Sa'ad came to Koufa that are bordered by buildings). It offered a convenient place for entering Iraq unencumbered by swamps and lagoons (Al-Tabari, vol.4, p.41). Koufa also enjoyed fresh air which was suitable for Arabs.

It is interesting to note that the locations of Islamic Cities that were constructed along the West flank of Iraq were not chosen at random, Koufa was built in the middle of Iraq opposite to Al-Mada'en and close to Giza. The author believes that this was done to observe the enemies' cities. Thus, Koufa was founded as a camp and then laid out on the basis of being a permanent residence to be developed into a city. It was also primarily a staging place for tribes, but it was established under a planned layout through three stages as follows:

- During the Caliphate of Omar Ibn Al-Khattab (17-23 / 638-643),
- During rule of Ziyad Ibn Abih (50-53 / 670-672)

- During rule of Khalid Al-Qasri through days of Hisham Ibn Abd El Malik (105-120 / 723-737) (Shaker, 1980, vol.2, p.353).

3.3.4 Development of Construction in Koufa

The city was demarcated, its planning set out and its most important buildings established within the first five years. It was first an assembly of tents, then one of temporary reed buildings that were built as temporary structures upon each return from war. During the era of Al-Mughira Ibn Shuoba (22-24 / 643-645) the locations of lined up tents became more permanent structures in the form of small walls of clay. After the year (50 / 671) people began to build houses from brick under the rule of Ziyad Ibn Abih.

3.3.5 Fire of Koufa and Formation of the City

“Fire broke out in the reed buildings and tents after ten months of staying in Koufa in the months of Muharam and Shawal, 17 / 639. The Caliph called for more permanent construction. This order coincides with the decision to construct in clay within the limits defined by the Caliph’s book, which stipulated that no-one build more than three Abya’at [rooms or houses] and never elevate them higher than three storeys. Main roads were to be of 40 cubits [approximately 20 m] wide and thereafter 30 and then 20 cubits. Alleys should be of seven cubits” (Al-Tabari, 1963, vol.4, p.40-48).

He also added, *“People of Koufa asked permission to build in reeds as had the people of Basra. Omar said, ‘Camps are better for military purposes and I do not like to contradict you, what are reeds?’ They replied: ‘If canes are irrigated, they become reeds’, so he said: ‘This is your business’”*. Thus the people of the two cities had built using reeds, until the fire of Koufa broke out after which they asked permission from the Caliph to construct in clay and he permitted them to do so.

All afore-mentioned outlines indicate that the first manifestation of the city was formed as an irregular camp and that it was a large village composed of different *Khitta’at* (territories). Each territory was completely independent such that its authority was in line with the increased population inside its boundaries. Few laws were imposed on them from outside except, as indicated in history books, that they sought Omar’s permission to construct in reeds, then clay and later followed his request not to build more than three storeys high. Nonetheless, jurists

Since the city had no wall, the housing belt was enlarged until it became extended in a circular shape (Shaker, 1980, vol.1, p.357). The planned inception of Koufa affirmed and extended the concept of the city, which had been initiated in Al-Madinah. This was reconfirmed in Basra (the establishment of which coincided with that of Koufa) and highlighted through its fundamental elements and distinguished characteristics (see figure 3.3.2).

3.3.6 Demarcation of Koufa and its *Khitta'at*

Al-Tabari described the planning and construction of the city centre: *"Sa'ad authorised Abu Al-Hayag over the territorialisation and to pursue what was indicated in Caliph Omar's book in respect to roads. He commanded that the main roads be 40 cubits, 30 for lesser ones and 20 cubits for minor linking streets. Alleys were to be no less than seven cubits and Qata'ei [allocated plots] 60 cubits. People soon gathered to discuss the place until they agreed upon it; then Abu Al-Hayag approved it. The first place demarcated and built in Koufa was the Mosque"* (Al-Tabari, 1963, vol.4, p.44).

Al-Balazri says: *"When Sa'ad Ibn Abi Wakkas determined the Mosque's location, he ordered a man who shot an arrow before Qiblah [towards Makkah], another before the North side, another before the South side and another before Seba [cool windward direction] and locations of all these arrows were marked. Then he placed its Mosque and Emirate house on the highest ground around it. He also shot two arrows for Nezar and the people of Yemen. The first arrow reached the left or Eastern one which is the Eastern side. The territories of Nezar were on the Western side beyond those marks. The other space before them was left for the Mosque and the Emirate house"* (Al-Balazri, 1957, p.388). Then *"Abu Al-Hayag Al-Assadi authorised the territories for people"*.

The above passage indicates: The territory demarcation was carried out by the consensus of the people. When this was revealed, Abu Al-Hayag, the prince's representative was to approve it. So Abu Al-Hayag did not determine any thing, but let the people execute the plan conforming to the principle of *Shura* (consultation) in Islam as based upon the Quran: *"Their affairs are based upon consultation amongst them"* (Quran, Surat Al-Shura, verse no.38).

The decision of building and demarcation of the Mosque and the Emirate House was a centralised decision. Thus the first element set and built in Koufa were the Mosque and the Emirate House beside it. The demarcation of *Hareem* on the four sides of the Mosque took the form of a yard (*Rahba*), in all likelihood a square one. It was marked with a boundary trench to

prevent neighbouring territories from encroaching upon it through any sort of construction. Construction in the territories only began after this trench was completed. These territories were separated by streets whose widths had been determined previously by Caliph Omar Ibn Al-Khattab, as the people of Koufa had not interfered in determining the places of the central elements (Mosque, Emirate House etc.).

The distribution of territories was implemented by lot. They were open ended and the size of each was related to the number of each tribe's inhabitants. Each was called by the name of the occupying tribe. Wahb narrated through Bakeeh Al-Wasti saying: "*Yazid Ibn Haroon narrated through Dawood Ibn Abu Hind saying: "We, people of Yemen, were twelve thousand people and Nizar represented eight thousand people, so we represent the majority of Koufa people. Our arms reached the Eastern side, so these became our territories"* (Al-Balazri, 1957, p.389). Thus, territories were not equal in Koufa but they differed in the area according to the number of people in each tribe. Thus these territories were not of a certain area and were never used as a territorial unit. This contrasts with the conclusion of Dr. Saleh Al-Hathloul (1981), who saw the unit of territory established in Basra and Koufa as the planning element of Fustat and that these cities depended on the tribe being flexible enough to expand and shrink to suit the territory of a repeated and limited area. Furthermore, this territory was the prototype for organising the city and its streets.

3.3.7 Digging the Trench and Settlement of Tribes on Roads

Al-Tabari says, "*They marked the yard [around the Mosque and Emirate House] with a trench that could not be exceeded by any construction. Outside this yard, five streets were constructed in Wada'a [opposite to the Qiblah in the Northeast side], four in its Qiblah, three to the East and three to the West and all of them were marked as well*" (Al-Tabari, 1963, p.44). Then Sa'ad ordered the tribe which wanted to construct to start building beyond this trench (see figure 3.3.3).

In respect of the city houses and *Khitta'at*, Al-Tabari documents how the five streets to the North of the central yard, four to its East, three to its South and three to its West, were taken up by various tribes. As he later added on page 45 "*The five streets so constructed to the North of the yard housed Salim and Thakeef next to the yard on two roads, Hamadan on one road, Bajeelah on another and Tain Al-Lat on the last one. On the Qiblah side of the yard there were four streets with Bani Assad on one road, a road between Bani Assad and Nakh'e, a road between Nakh'e and Karza and another between Kauda and Al-Azd. Some tribes settled on*

three streets built to the South of the yard; Ansar and Muza'Yana on one road, Tameem and Muhareb on one road and Assad and Amer on another. Some other tribes settled along three other streets to the West of the yard; Bujaila and Bahla on a road, Jedeelah and Alkali on a road and Juhaynah and Aklalat on another, those [all aforementioned] were next to the yard by lot. Other people settled between and beyond this" (Al-Tabari, 1963, p.45) (see figure 3.3.3).

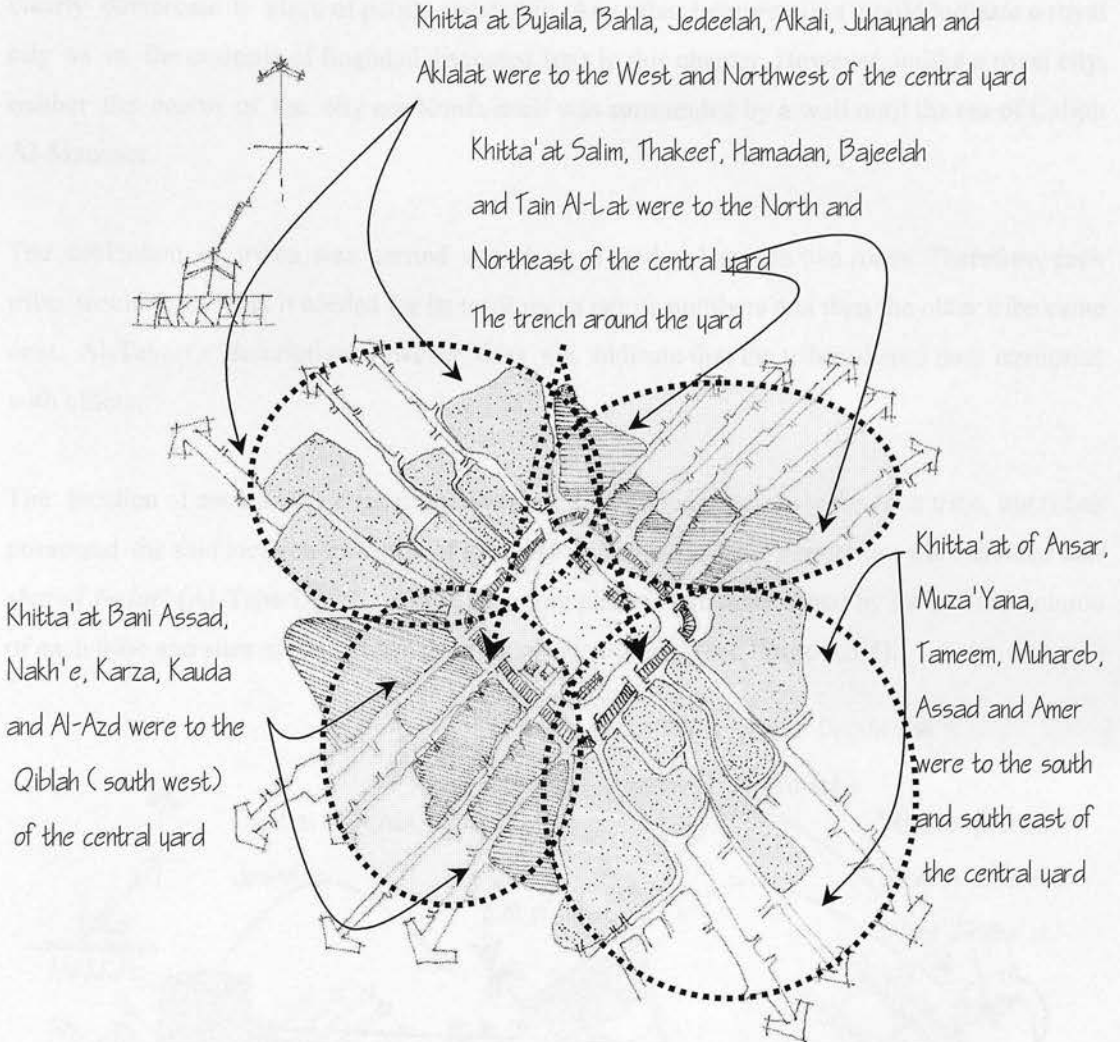


Figure 3.3.3

Khitta'at Al-Koufa According to the Narrations of Al-Tabari (Source: the Author).

This narration by Al-Tabari suggests that settlement in Koufa was carried out directly after selecting its location. Difference of streets from three to five in each side of the yard and difference of their positions and dimensions is evidence of the diversity of sizes among the tribes as reflected in their territories. Division of these territories was carried out by lot, some people settling directly next to the yard while others occupied more outlying territories along the streets.

Was the trench around the central yard dug because the central authority wanted to protect the centre against encroachment? If so, this would suggest that the authority found it difficult to prevent housing creep by affirming the boundary of the *Hareem* of the Mosque (the area around the Mosque) and, presumably of other public places protected under *Shari'a* using other, less persuasive means. The author however, believes that this method of marking was carried out to clearly demarcate a place of public ownership. Any other interpretation would indicate a royal city as in the example of Baghdad discussed later in this chapter. However, unlike a royal city, neither the centre of the city nor Koufa itself was surrounded by a wall until the era of Caliph Al-Mansour.

The settlement of tribes was carried out along a road or between two roads. Therefore, each tribe would take what it needed for its territory as per its numbers and then the other tribe came next. Al-Tabari's description however does not indicate that the tribes shared their territories with others.

The location of each *Khitta'a* (territory) was not determined previously for each tribe, but tribes possessed the said location by virtue of lot as Al-Tabari indicates, "*Territories were divided and shared by lot*" (Al-Tabari, 1963, p.387), therefore places were determined by lot and the volume of each tribe and sites of roads were determined accordingly (see figure 3.3.4).

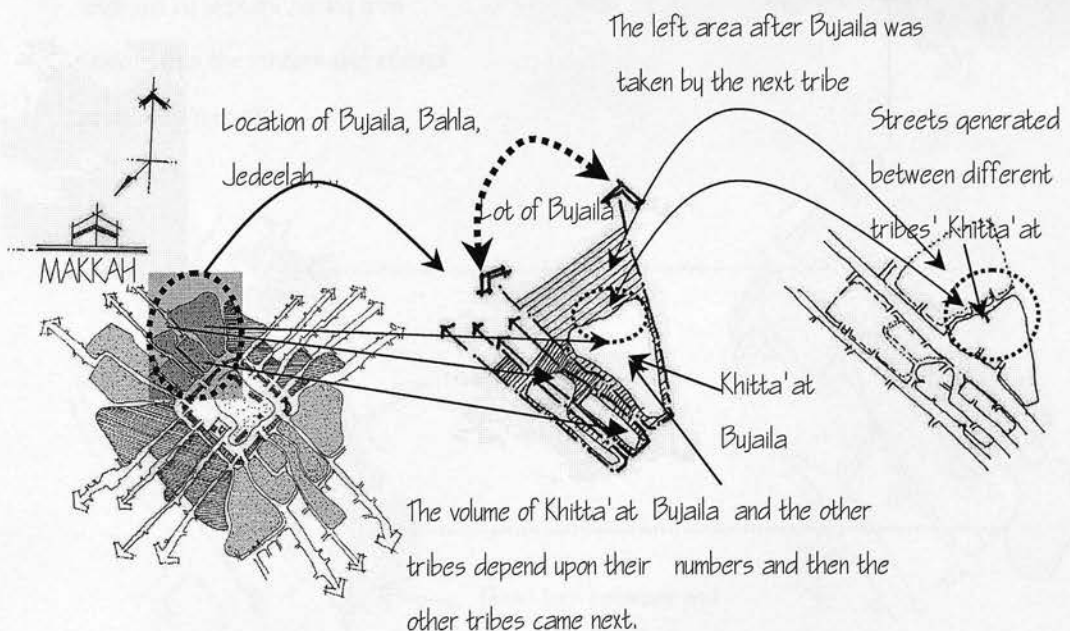


Figure 3.3.4

Places were Determined by Lot and Volume of Each Tribe and Sites of the Roads were Determined Accordingly (Source: the Author).

Later, workers coming from outside found parts of dead land within the cultivated area, so built upon them. These parts were located throughout the street network (inside and outside *Khitta'at*) and as the workers built using ownership rights gained by the virtue of *Ihya'a*, the street grew narrower. "*Workers built in them [Khitta'at] and, as a result, they narrowed their yards and courts*" (Al-Tabari, 1963, vol.4, p.388) (see figure 3.3.5).

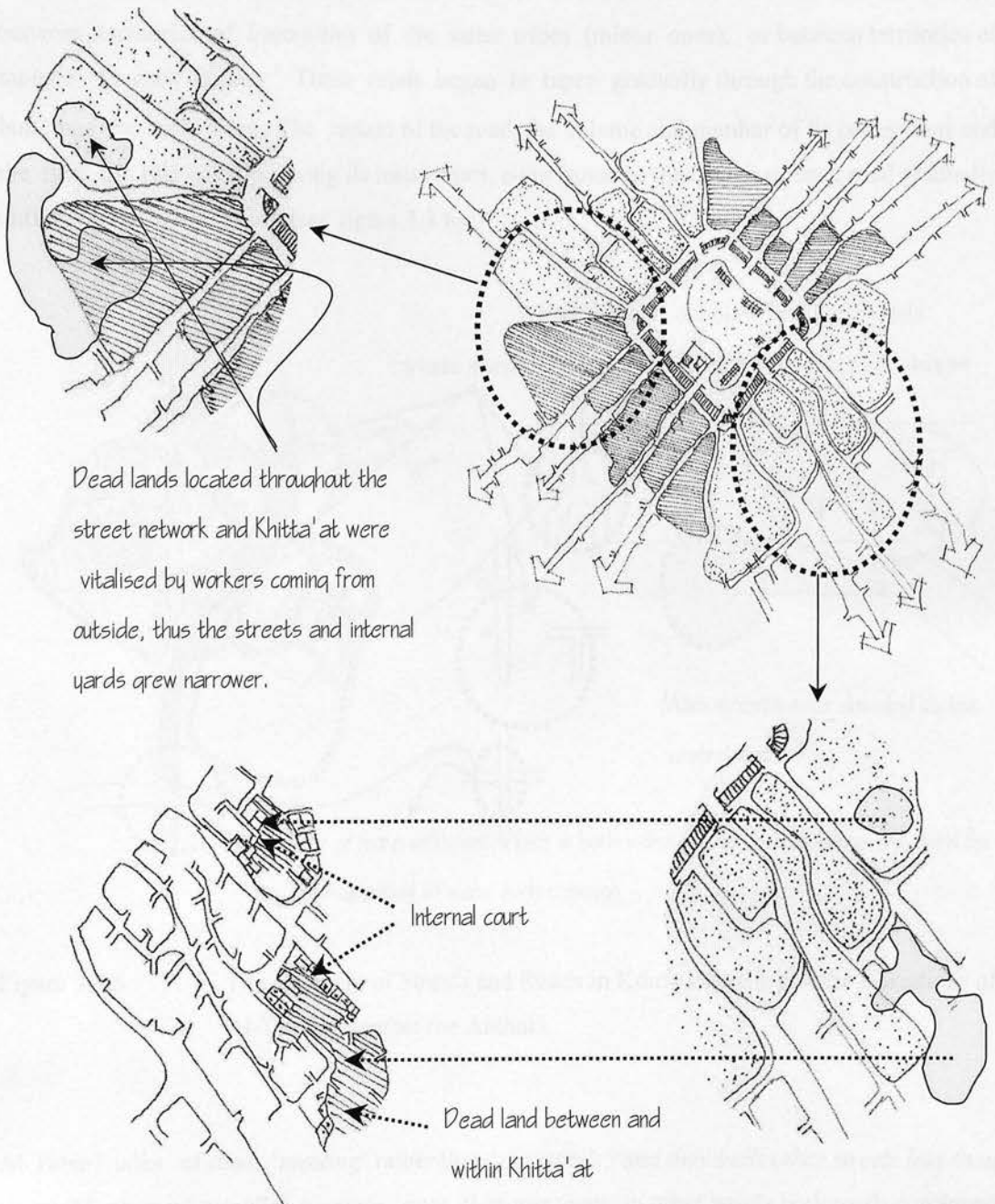


Figure 3.3.5

Applying the Principle of *Ihya'a* to the Dead and Waste Lands by the Workers Coming from Outside Led to the Narrowing of Yards and Streets (Source: the Author).

For the smaller scale Al-Tabari continues and adds, “*These were its great major streets and they [the tribes] built other streets that were smaller. These ran parallel to the main ones, or intersected them. There were also others subsequently which were narrower*” (Al-Tabari, 1963, vol.4, p.45).

Roads connecting streets and those in between, the alleys, were demarcated by construction on both sides, i.e., these roads of their different levels (main-secondary-service) were left to form between territories of fraternities of the same tribes (minor ones), or between territories of moieties in each phratry.¹ These roads began to taper gradually through the construction of buildings on both sides. The nature of the road, the volume and number of its pedestrians and the type of relationship among its inhabitants, contributed to the design of each road gradually until it gained its final form (see figure 3.3.6).

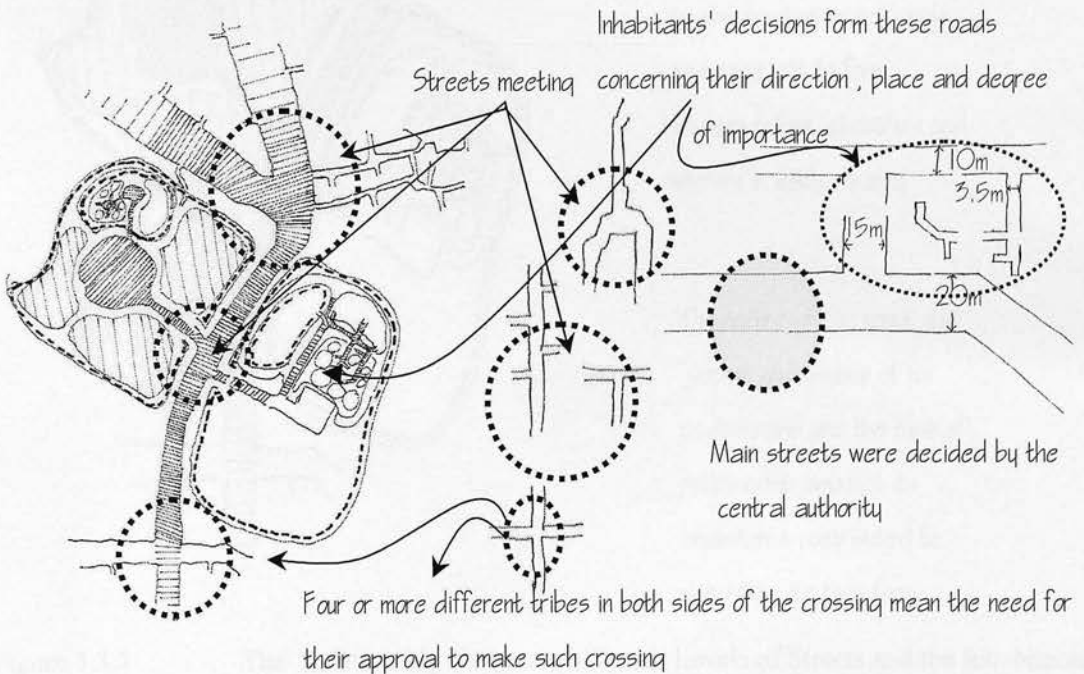


Figure 3.3.6 The Concept of Streets and Roads in Koufa Based Upon the Narrations of Al-Tabari (Source: the Author).

Al-Tabari talks of roads ‘meeting’ rather than ‘crossing’: “*and they built other streets less than them. These went parallel to main ones, then met them*” in other words both roads continued

¹A tribe of people that have one father. A phratry is smaller than the tribe and the share in land is smaller (Ibn Manzoor, 1965, p.121).

beyond the meeting point. Crossing roads needed the approval of the inhabitants of the surrounding territories but this was rarely found in the traditional environment.² The decisions for placing roads could only have been carried out by local inhabitants or those people who represented them. No central authority had the power to determine this matter (see figure 3.3.6).

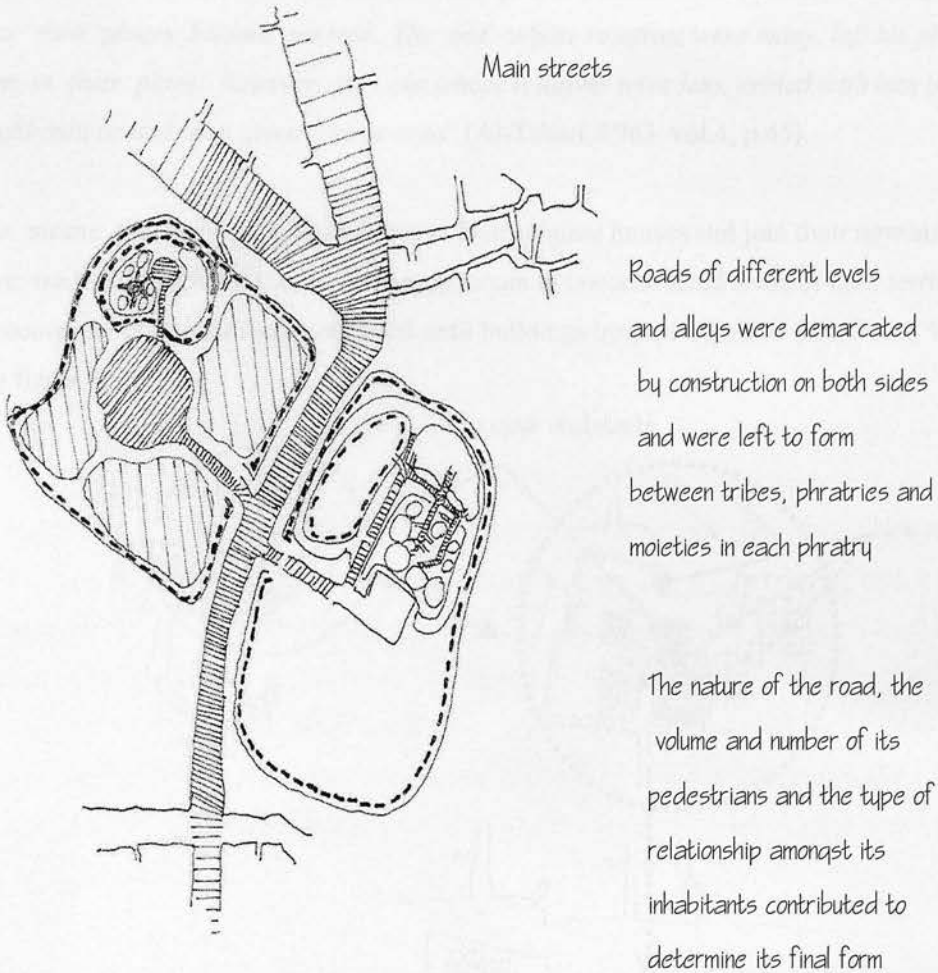


Figure 3.3.7 The Relationship between Different Levels of Streets and the Inhabitants Decisions (Source: the Author).

3.3.8 Allocation

In addition to territories, there were parcels of lands distributed by *Iqta'a* (allocation) among some people within the area. These allocations were about 32-46 m² as evident from archaeological remains (Shaker, 1981, p.357).

²In case of centralisation of planning only, Baghdad for example.

3.3.9 *Al-Rawadef*

Al-Rawadef are people who come to the city to establish permanent residency. Upon their arrival they stay with relatives in the city and then settle in the same place if there is room or, if not, they move to another location (Ibn Manzoor, 1956, vol.1, p.1152). Al-Tabari says, “When people were visited by their relatives and these places became crowded, they did not feel at ease since their places became narrow. The one whose relatives were many, left his place to join them in their place; however, the one whose relatives were less, settled with him if they were neighbours or had been given a large area” (Al-Tabari, 1963, vol.4, p.45).

This means that some people would leave their original houses and join their new arrivals or, if there were few arrivals, they became neighbours in unconstructed areas of their territories. The phenomenon of *Al-Rawadef* continued until buildings became adjoined (see Guest, 1907, p.78) (see figure 3.3.8).

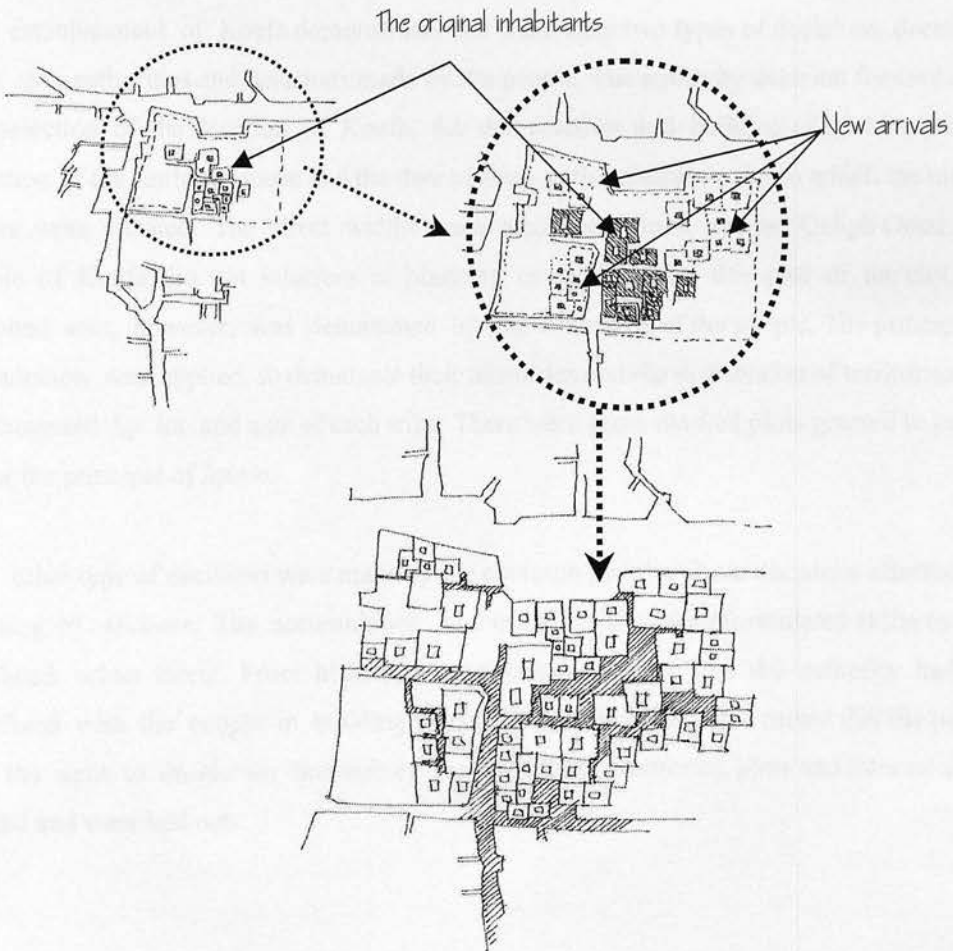


Figure 3.3.8

Al-Rawadef Phenomenon Continued Until Buildings Became Adjoined Forming a Coherent Urban Fabric Known as *Al-Amer* (Source: the Author).

3.3.10 *Al-Ara* (Grazing Grounds)

Al-Ara is a public grazing ground for horses which were used for *Jihad* (conquest) and it is located in the central courtyard (Al-Tabari, 1963, vol.4, p.52). It seems that this grazing area was not used except during early days of Koufa since it is mentioned that they had four thousand horses and it was not possible to keep so many in the one place as indicated. Omar allocated this place for two senior companions of the Prophet ﷺ (on equal shares between Abu Mosa Al-Ashari and a group of the Abs tribe). This allocation was considered suitable land for construction. “*Horses of Koufa were grazed beside the city at Akoul in a certain place called Ma'alaf Al-Omara'a a few kilometres away from Koufa*” (Al-Tabari, 1963, vol.4, p.52).

3.3.11 Conclusion

- The establishment of Koufa demonstrates that there were two types of decisions, decisions from the authorities and decisions made by the people. The authority decision focused upon the selection of the location of Koufa, the demarcation and building of the Mosque, the selection of the Emirate House and the demarcation of the central yard into which the market places were situated. The street widths were also determined by the Caliph Omar. The people of Koufa did not interfere in planning or demarcating this part of the city. The inhabited area, however, was demarcated by the consensus of the people. The principle of consultation was applied to demarcate their territories and the distribution of territories was implemented by lot and size of each tribe. There were some marked plots granted to people under the principal of *Iqta'a*.
- The other type of decisions were made by the common people. These decisions affected the building of *Al-Amer*. The accumulation of these micro decisions formulated at the end the inhabited urban fabric. From historical narrations it is clear that the authority had not interfered with the people in building or organising this fabric. This meant that the people had the right to decide for themselves the way their territories, plots and internal alleys looked and were laid out.

The Case Study of Fustat and the Ownership Concept

3.4 City Of Fustat (20 / 641)

‘Fustat’ means ‘pavilion’ and so many historians relate this to the pavilion of Amro Ibn Al-As the founder of the city. Amro established the city after the first conquest of Alexandria (20-21 / 641-642) (Al-Tabari, 1963, vol.4, p.109, Al-Maqrizee, 1978, vol.1, p.297).

3.4.1 Location

The Location of Fustat was an open place between the River Nile and the Eastern mountain known as Mount Al-Mukatam, *“the location of Fustat, today known as Cairo City, was an open place with farms situated between the River Nile and the Eastern mountain”* (Al-Maqrizee, 1978, vol.1, p.286). *“It is situated at the edge of the desert with no sea lying between it and Omar”* (Yaqout, 1990, vol.4, p.263). The only construction was a fort known today as the ‘Wax Palace’ fort. This fort was adjoined from North by trees and grapevines where the old Mosque, Amro Ibn Al-As was later situated. Several churches and monasteries for Christians lay between the fort and the mountain (Al-Maqrizee, 1978, vol.1, p.286).

3.4.2 Choosing the Mosque’s Location; the Principal of Priority of Lands Ownership in Islam

“When Amro Ibn Al-As decided to besiege the fort, two people [Qayssaba Ibn Kolthoum and Obaydah] settled with their families in an oasis near the fort, where they put up their tents and stayed in them through out the siege until Allah helped them conquer the fort. Afterwards, Qayssaba went out with Amro to Alexandria and left his family behind until the army succeeded in conquering Alexandria. Qayssaba went back to his house and Amro Ibn Al-As marked out the location of his house before the oasis where Qayssaba settled. He consulted with Muslims about the location of the Mosque! They agreed that Qayssaba’s house [place] should be used for the Mosque. Amro asked him for that saying, ‘I have territories for you Abu Abdul Rahman

[Qayssaba surname] wherever you like. Qayssaba replied, 'You know Muslims. I seized this house [place] and owned and so give to Muslims. Then he departed with his people, Bani Sawm and took up a territory with them' (Al-Maqrizee, 1978, vol.2, p.246).

From the above we find that Qayssaba occupied the location that was not owned by anyone and owned it as nobody else had proceeded him in doing this. Thus, the principle of priority in *Ihya'a* applied and was adopted in demarcation. It is evident that if one person owned a part of land by precedence, it is inadmissible for even a governor to throw him out, **thus the ownership here is evident by the principal of priority.**

The nucleus of Fustat city was the Mosque, known today as the ancient Mosque or Mosque of Amro Ibn Al-As and the Emirate House. Territories were distributed around it as had occurred in Koufa. Amro Ibn Al-As built Fustat Mosque fifty cubits long and thirty cubits wide with a road surrounding it on all sides. He also made two gates to it from the North, two from the West and two facing Amro's house. The length of the Mosque from Qiblah to Bahari was similar to Amro's house length. The Mosque did not contain a court, so if it was summer, people sat in its yard on all sides. Only seven cubits the minimum distance for an alley, separated Amro's house and the Mosque (Shaker, 1981, vol.1, p.362) (see figure 3.4.1).

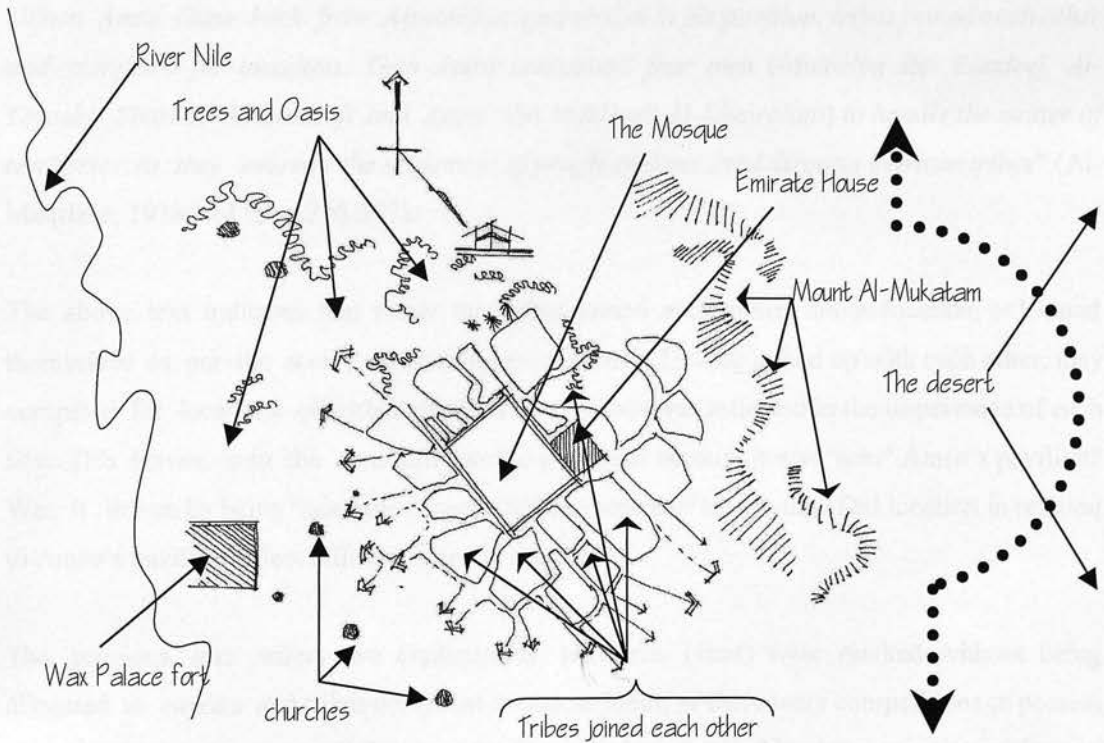


Figure 3.4.1 A Hypothetical Presentation of Fustat Configuration Based upon the Narrations of Shaker, 1981 (Source: the Author).

3.4.3 Ownership and The Role of Territory in Establishing Fustat

There are three opinions in respect of the territory's role for establishment of Fustat. The first is that the territory was used as an equal unit of demarcated land distributed by authorities to tribes (Al-Hathloul, 1981, pp.39-44). The second is that the tribes carried out everything independent of any central authority. Each chose and demarcated its location, leading to chaos. Consequently, a territorial mess prevailed in Fustat (Guest, 1981, pp.56, 78). The third opinion is that there were tribal customs affecting settlement in Fustat whereas warriors settled in a way reflecting their military status in their siege of the fort (Fustat location) (Kubiak, 1988, p.66).

Since it is not the goal of the author to compare or criticise the aforementioned opinions but to point to the ownership concept reflected in each opinion, the first opinion recognises *Iqta'a* as the method utilised to establish ownership and the principal of *Ihya'a* was applied according to the other two opinions.

3.4.3.1 Settlement in Fustat and Establishment of *Al-Amer*

"When Amro came back from Alexandria and settled in his pavilion, tribes joined each other and competed for locations. Then Amro authorised four men (Muawiya Ibn Khadeej, Al-Teyeebi, Shareek Al-Ghateefi and Amro Ibn Makhram Al-Khawalani) to handle the matter of territories as they oversaw the settlement of people and resolved disputes between tribes" (Al-Maqrizee, 1978, vol.1, pp.296-297).

The above text indicates that either the tribes joined each other in one location, or located themselves as per the social relationship among them. Having joined up with each other, they competed for locations of settlement. This competition was reflected in the importance of each site. This leaves open the question: was the site better because it was 'near' Amro's pavilion? Was it driven by being 'near' the Mosque and the centre of leadership? Did location in relation to Amro's pavilion reflect military or social standing?

The previous text offers two explanations: territories (sites) were marked without being allocated to anyone and tribes competed to choose them; or there were competitions to possess sites. However, the responsibilities of the four people authorised by Amro remain ambiguous. Were they given the location and told where to settle? Or did the tribespeople choose the sites and borders of their territories? Again the issue of ownership arises through the way the land

was seized and possessed. If it was demarcated first and then allocated to the tribes, then it was be possessed through *Iqta'a*. If it was possessed by the demarcation of the tribes for themselves by *Al-Ihtijaar* (marking out the land by stones or by any other mean to demarcate its boundaries). Which means that the land was seized through the principal of *Ihya'a*.

In both cases the ownership, with its principles, was to affect the formulation of *Al-Amer* (the urban fabric built by the common people). These two principles, as is shown in the next chapters, reflects a unique concept of building and constructing of the urban fabric of the city. It is very clear that the *Iqta'a* principle meant giving a demarcated land from the authority to people and that *Ihya'a* is the demarcation of the people by themselves without any interference from the authority. What is common about both of them is that the central authority had no control on the planning the internal of the territories possessed through either of the two methods.

3.4.3.2 Description of Territories and its Effect in the Formation of the Environment

The orientalist Guest estimated that there were 49 territories of Fustat during its establishment and attributed all but four of them to occupying tribes or their leaders. Maqrizee ascribed people to 21 territories (Guest, 1981, p.83, Al-Maqrizee, 1978, vol.1. pp.296-299).

Al-Maqrizee says describing Lakhm's territory "*Lakhm started its territory from where Al-Raya's territory ended and went up to North side*" (Al-Maqrizee, 1978, vol.1, p297). He said in Farsyeen's territory, "*Farsyeen is a group that embraced Islam in Syria - as they were willing for Jihad - they went with Amro to Egypt. Later, they established their territory close to the mountain edge called Bab Elion [Babylon]*" (Al-Maqrizee, 1978, vol.1, pp.297-298). This mountain lies today beyond the territory of Ibn Tuloun's Mosque, as is the land known as the 'Yellow Land' belonging to Al-Askar (name of the city built by Ahmed Ibn Toulon).

As concerns seizing *Khitta'at* by precedence, Al-Maqrizee says that, of the territories of Bani Wa'el, Al-Qays, Al-Rayah and Rashdah, "*the reason for their settlement was that they [the settlers] were the first convoys of Amro Ibn Al-As. Thus, they settled earlier and seized such places before conquest*" (Al-Maqrizee, 1978, vol.1, pp.297-298).

Seizing More Than one Territory in two Different Places at the Same Time was the case of the Muharah tribe. Al-Maqrizee said, "*It was said that the territory to the West of Al-Rayah belongs*

to the Muharah tribe where they stabled their horses. If they went back to Joma'a prayer, they left horses at Yashkur" (Al-Maqrizee, 1978, vol.1, p.299). Al-Maqrizee did not mention any reason for having two territories at the same time which were some distance from each other.

Through Earlier writings concerning the methods of seizing and initiating territory describe how tribes demarcated their territories with each conforming to the size of the tribe. The territory was not imposed as a territorial unit to which the tribe would need to adapt itself. Marking the territory borders was the choice of each tribe solely. Once one tribe had completed marking its territorial borders, another tribe began to layout its territory from the point where the former one ended.

Some tribes took possession of their territories under the principle of precedence, as happened for Bani Wa'el, Al-Qays, Al-Rayah and Rashdah. Some tribes had two territories in two separate places at the same time, one for residence and one for their horses' stalls, as happened in the case of Muhrah's tribe. This meant that the **principle of possession and priority had an essential impact in formation of Fustat and the Islamic Cities in general**. Otherwise one tribe could not have enjoyed two territories at the same time. No allocation of land by the authority was evident in respect to the settlement of Fustat. The relationship between the territory and the tribe was affirmative in most territories of Fustat.

The demarcation of the Mosque is not as evident here as it was in Koufa. Neither the formation of the courts, the setting of streets, division of territories, nor the initiation of construction is indicated. Fustat took longer to settle than did Koufa.

3.4.3.3 Freedom of People to Choose Their Territory Locations (the Case of Giza Territories)

"When Amro settled in Fustat, he ordered those he left behind to join him, but they hated that. They said: 'we have done for the sake of Allah as we stayed here and we do not wish to leave since we have been here for only a few months'. Amro Ibn Al-As wrote to Omar Ibn Al-Khattab telling him about Hamadan, Al-zi Asbah, Yafe'e and those who chose to stay in Giza. Omar replied: 'how would you like to be separated from your companions and have the sea put between you and them? You might not be able to help them, so join them together. If they refuse and like their place, you build them a fort from the Muslims' booties'. Amro gathered them and told them about Omar's letter but they abstained from leaving Giza. Then, Amro commanded

them to build a fort. But they hated this idea as they said: nothing is better than our swords. Hamadan and Yafe'e disliked this, so Amro built the fort for them" (Al-Maqrizee, 1978, vol.1, p.206).

Through the text, it is evident that settlement in Giza was contradictory to the Caliph's order that no water should lie between him and his army since it was located to the West side of River Nile. This choice confirms the people's freedom of choosing locations and borders of their territories. Neither Caliph nor Prince Amro compelled them to leave. And Amro even built a fort for them.

In general, it seems that the territories surrounding the Mosque across the streets and the court, were Rayah's first territory. Their houses surrounded the Mosque on all sides.

3.4.4 Conclusion

- From the general review of the demarcation of Fustat it is clear that the principal of priority played a major part in occupying lands and later owning them by the principal of *Ihya'a*. Also the granting of lands after their demarcation and then distributing them between the tribes was another method of providing land ownership. Both granting and possessing by priority and *Ihya'a* were the two methods of demarcating the outer boundaries of the land. This type of ownership is called land ownership through seizing and insertion, which the author covers in great detail in Part Two of the thesis. The freedom people had to choose their territory confirms the fact that the authority had no right to compel them to leave their sites.

The Case Study of Wasit and the Ownership Concept

3.5 City Of Wasit (75-83 / 694-702)

This city was established for various administrative reasons during a period of civic unrest in Iraq. Al-Hajaj Ibn Youssof Al-Thaqafi needed a location centred between the two cities of Koufa and Basra to be settled by soldiers of Syria who came to his aid.

3.5.1 Location

Wasit is about one league (3 miles) from Basra. *“Ibn Hawkal said about Wasit: ‘it is rich in trees and plants and has no open areas. It has a vast land and large sides. It is situated at the juncture of several roads and water ways’”* (Al-Maqdisi, 1972, p.118). In respect of choosing the location, Yakout’s story indicates that Al-Hajaj sent someone to survey the place. He spent a night in it, liked it, and bought it.

3.5.2 Planning of Wasit

“Wasit was organised similarly to Basra and Koufa, but it was a royal city for Al-Hajaj, his men, administration and soldiers.” (Shaker, 1980, vol.1, p.358).

3.5.2.1 Concerning the City Centre

The Mosque, known as the Al-Hajaj Mosque, was built in the city centre as first mentioned by Ibn Rasta. Next to it, the Emirate house was built as the royal premises. A high green dome was built on the Mosque, which can be easily seen from afar. The palace was situated to the west of the Mosque towards Qiblah. An empty space was provided around the Mosque, as indicated by Bahshal as an open area around the Emirate house with roads and streets branching from it. The public market was then located near the centre (Bahshal, 1979, p.44).

Planners authorised by Al Hajaj began to gift areas and each tribe was given its own territory. The tribes constructed buildings on their territories on the West Bank of River Tigris. Later, other people built on the eastern side (Bahshal, 1979, p.140). Afterwards, Wasit was surrounded by a wall and a trench (Al-Kamel, 1964, vol.2, p.625). A pontoon (a bridge of boats) linked the two halves of the city across the Tigris.

3.5.2.2 Markets

Al-Hajaj allocated a certain part of the market for people of every trade. To one side of the market, there were food sellers, traders of seeds, bankers and spice dealers. Towards the Tigris, there were daily wage labourers and builders from Al Khar'razeen (see figure 3.5.1).

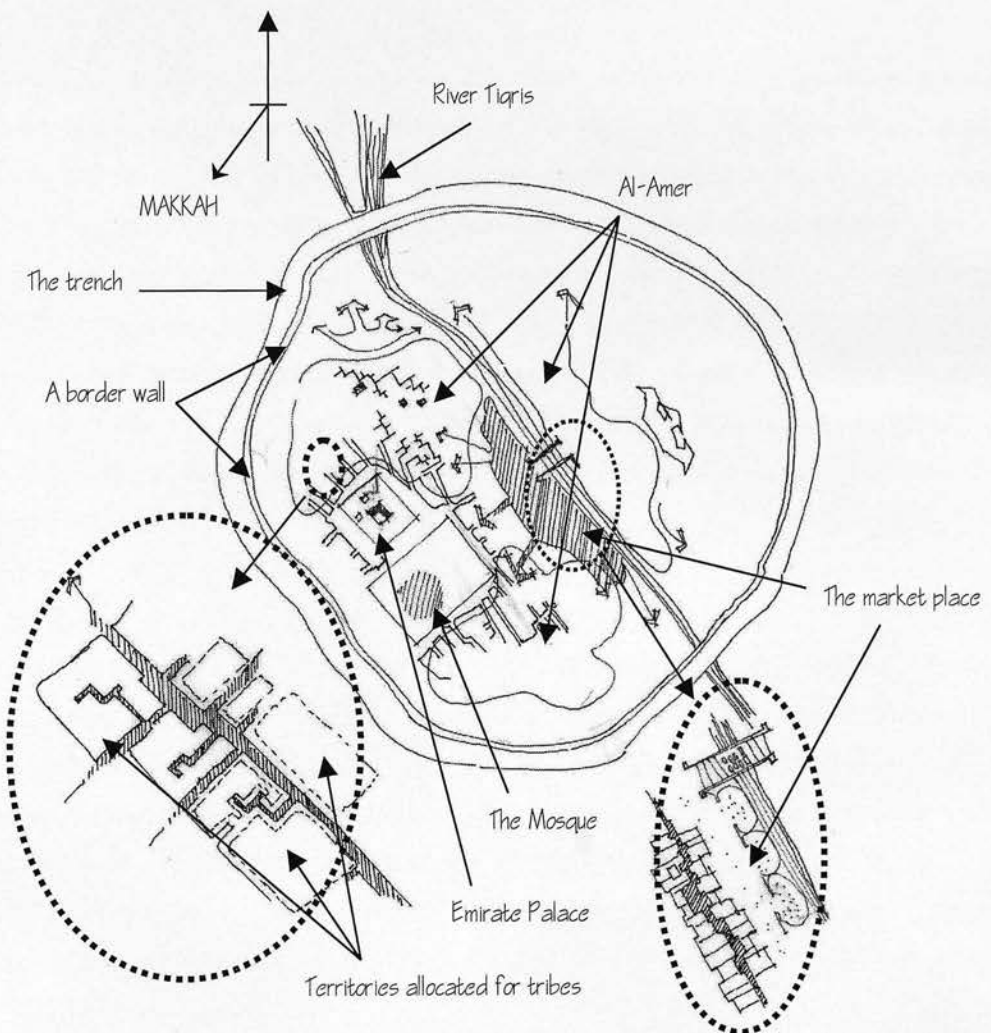


Figure 3.5.1 Hypothetical Construction for Wasit According to Bahshal and other Different Narrations (Source: the Author).

3.5.3 Conclusion

- The city was deliberately built to be a royal one, i.e.; it was planned from the centre and territories were allocated for tribes. The city centre contained the mosque, Emirate house and the market that extended parallel to the Tigris in the form of a street of shops and traders on both sides. Tribes, by virtue of the prince's allocation, settled the city. Thus each tribe constructed buildings on its own territory. The city stretched along two riverbanks. Historical texts do not indicate how this occurred, whether by *Iqta'a* or *Ihya'a*. Was this the result of centralised planning? It is worth mentioning that the constructional vision of Al-Hajaj was clear as he built the mosque, Emirate house, trench and wall within three years (75-78 / 694-697). However, construction of the residential urban fabric – *Al-Amer* - of the city (houses, courts, yards, cul-de-sacs etc.) began in 81 / 700 to 83 / 702 (Shaker, 1980, vol.1, p.358).

SECOND GENERATION CITIES

The Case Study of Baghdad and the Ownership Concept**3.6 Baghdad: Al-Mansour's City: "City of Peace" 145 / 762**

Its name was known at the age of Hamorabi and its location was a market for Khalaf Ibn Al-Walid (Al-Tabari, 1963, vol.7, pp.230, 231).

3.6.1 History of Choosing the Location and Development of the City

Al-Mansour sent an emissary to look for the right location in Hashimeyah. The person selected a particular place nearby the city of Baghdad today. Al-Mansour himself went out and spent a night there, but he did not like it. He later returned to another place he found more suitable. Many historians mention that the location he chose had a village called Baghdad as it had been an ancient monastery with some markets for some sermonic villages. To the South, there was a village called Karkh that probably had a wall (Al-Tabari, 1963, vol.7, pp.21, 277, Al-Yaqoubi, 1890, p.235). The location had the Tigris to its East and the Euphrates to the West. All those who came from East or West settled in it. The city location was located in the centre of Iraq between Basra, Wasit, Koufa, Mussel and all other areas. It had land, water and mountains. The city is also fortified and has a good climate and not much desert (Al-Yaqoubi, 1890, pp.237, 238).

Al-Mansour built Karkh City to the South of Baghdad. He regulated its markets and located them away from Baghdad as he feared its people and preferred to steer clear of their dirt. He regulated these markets as well. He also built Al-Rassafah City on the East bank of Baghdad as a camp for his son Al-Mahdi and his soldiers. Other cities as well as large suburbs attached to Baghdad followed suit and the city expanded, meeting up with Shamaseyat to the East of Tigris and going North to Karkh. Baghdad expanded mostly on the eastern side of the Tigris. Al-Musta'een built a wall for it to the North. Baghdad then expanded South as Al-Mustazher built another wall for it (see figure 3.6.1).

In studying Baghdad, it is clear that the city was centralised in its founding. It was also a royal city in which the authority controlled most of its decisions that formed its core – e.g., as the

Mosque, markets, roads, then the wall. *Iqta'a* however, played the major role in the formation of the cities that grew up around Baghdad. Al-Mansour allocated areas for his relatives and his statesmen of guards, soldiers and chiefs of tribes. This is contradictory to other former military cities in which *Ihya'a* and territorisation played the main role.

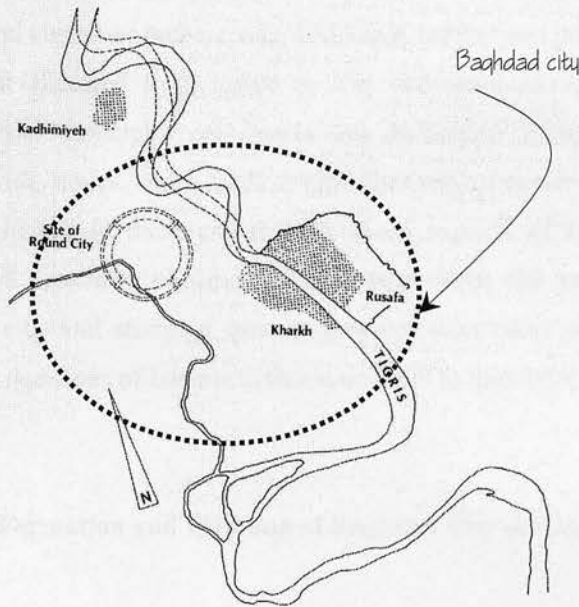


Figure 3.6.1 Location of Baghdad (Source: Fethi, I., 1982, p.27).

Baghdad is considered the most centralised Islamic City in its urban planning and construction. Accordingly, it has become the most studied and surveyed Islamic City. Unfortunately **this has led many researchers to conclude through their study of Baghdad that Islamic Cities are planned as per the western concept of planning** (Nagi, 1966, Mostafa, 1958), thus, the concept of ownership through *Ihya'a* was not applied or practised which means that the only way to possess land in such cities was through *Iqta'a* and other transactions.

All scholars and orientalist of Baghdad depended on books by historians such as Al-Baghdadi, Al-Tabari, Al-Yaqoubi and Al-Balazri in setting out their thoughts about the city's layout-i.e. how it commenced, or was planned, developed and expanded. There is a great resemblance between descriptions provided by such historians of the city and its general conception (in spite of differences of their narrations, related to the city measurements as indicated in historical texts). This matter is discussed here in greater detail since it is very important to find out how the city was formed. One must bear in mind that the research focuses on housing blocks and concepts of the public urban fabric built by people. Researchers have not paid attention to this in

their studies about cities, particularly Baghdad. Thus they neglect to show how housing areas were formed as clustered blocks of connected buildings.

For example, in studying Baghdad, researchers did not pay great attention to the allocation of land outside the city wall. All that is mentioned is that such lands were allocated and attributed, were very large and contained paths, roads, a Mosque, market and public bath houses. How was it divided? Was it allocated from inside or was it divided into territories distributed among inhabitants? Or, did principles of *Ihya'a* and *Al-Tahjeer* (petrification, which means: to demarcate land with stones, walls, reeds or any other way of demarcation) affect the formation of such housing blocks in these areas? **It is these aspects of Baghdad, rather than its monumental and centrally planned matters that form the subject of this work.** The formation of the city and study of how its decisions were taken give a clear indication of the method of making decisions of Islamic Cities in contrast to their core and markets.

3.6.2 Stages of Formation and Planning of Baghdad City through Historical Texts

3.6.2.1 Narrations of Al-Khateeb Al-Baghdadi

"The city foundation began in 145 / 762 and construction was completed in 146 / 763 when it was called Al-Salam (Peace) city" (Al-Khateeb, n.d, vol.1, pp.66, 67). And, he adds on page 67 that Khawarizmi said that the wall of Baghdad and other works were completed in 148 / 765: *"I was told that when Al-Mansour decided to construct it, he brought engineers, construction specialists land planners and horticulturists"*.

Al-Mansour authorised Abu Artah Al-Hajaj Ibn Yousef, an Arab from Qahtan tribe and one of Koufa's superiors and keepers, to establish the city layout assisted by three other people. As per Al-Yakoubi's story, as they were: Abdullah Ibn Mehrez, Shehab Ibn Katheer and Omran Ibn Al-Wadah (Shaker, 1980, vol.1, p. 367). *"Al-Mansour described for them what was on his mind for the city, then he brought builders, carpenters, diggers, blacksmiths and others. He gave them money and wrote to each country that had people who were knowledgeable about construction. He did not initiate construction until he had thousands professionals representing different trades. Afterwards, he demarcated it to be round [a perfect circle]. It is said that it is the only round city in the world"* (Shaker, 1980, vol.1, p.76) and he also added on page 77 about the area isolating gates that: *"This faseel [area zone for protection] goes round all gates in a such way that gates for roads were initiated. The width of each faseel from the wall to the roads' openings reached 25 cubits"*.

Dr. Shaker Moustafa indicated that the layout was developed in an unknown fashion that was very different from most Islamic Cities. There were Byzantine cities as Argean and Amed, Arabic ones such as Hasar, Sasaneya, Hamadan, Gund Yaspur and Mada'en and even Islamic ones like Wasit and that all were constructed, similar to Baghdad in the form of a circle that contained Caliph's palace and Mosque in the centre surrounded by a vast court of palaces, then, eventually walls surrounded the whole (Shaker, 1980, vol.1, p.368).

Wakee'i said, "The city is round, contained by a wall that has a diameter from the Khurasan gate to the Koufa gate of 2,200 cubits and from the Basra gate to the Al-Sham gate of 2,200 cubits" (Al-Khateeb, n.d, vol.1, p73).

"The thickness of this inner wall height is 35 cubits which has some towers; each is 5 cubits thick. Its width from the bottom is 20 cubits, then comes the faseel between the two walls whose width is 60 cubits, then comes the first wall; the faseel wall that has the trench under" (Al-Khateeb, n.d, vol.1, p.74) (see figure 3.6.2 and figure 3.6.3).

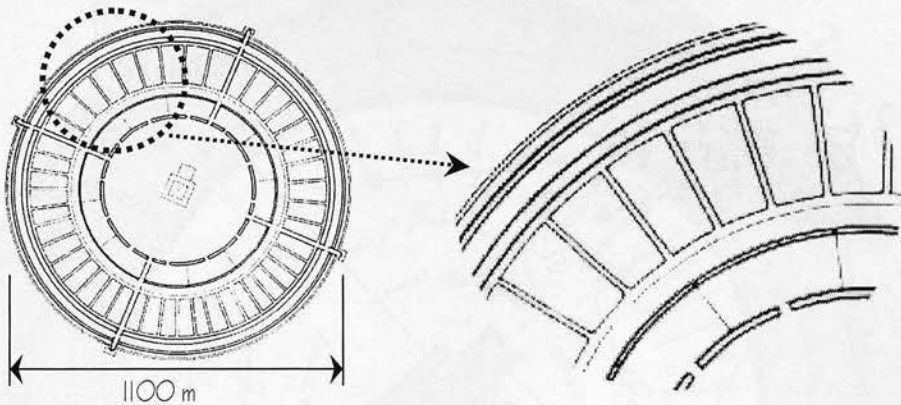


Figure 3.6.2 Reconstruction of the Walls of Baghdad and its *Faseels* Based on the Narrations of Al-Khateeb (Source: Lassner, J., 1970).

Based on this account by Al-Khateeb Al-Baghdadi Lassner imagined that the city of Baghdad was laid out in 3 concentric circles. The central area (the 'court') included the palace, Mosque, guardhouse and a shed for the police chief and guard chief. The next circular band was allocated for the residence of Al-Mansour's children, close servants and slaves, public treasury, arms safe and *Divans* (tax *Divan*, message *Divan* and soldiers). The outer circular area was allocated for the residences of Al-Mansour's leaders and public officials (Lassner, 1970, pp.134-144) (see figure 3.6.4).

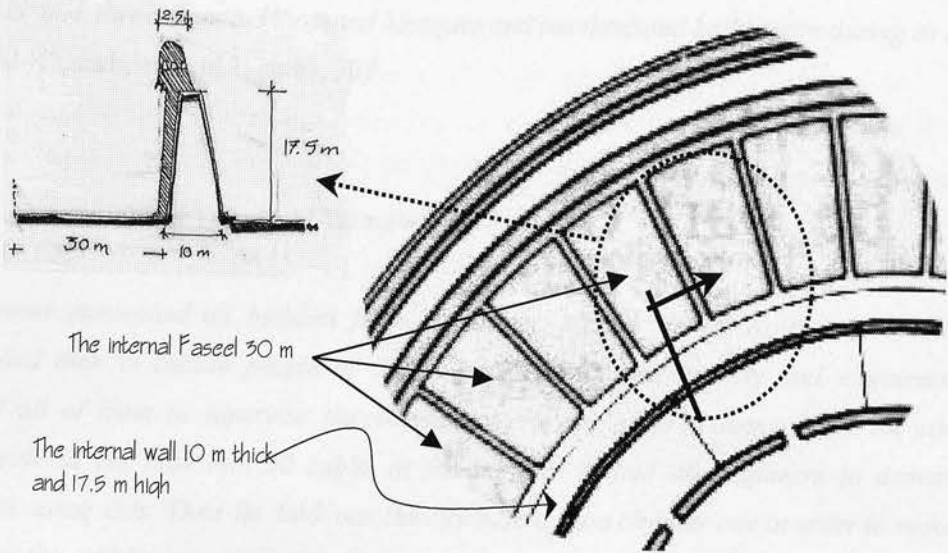


Figure 3.6.3 A Detail for the Internal Wall and the Internal *Faseel* According to the Narrations of Al-Khateeb (Source: the Author).

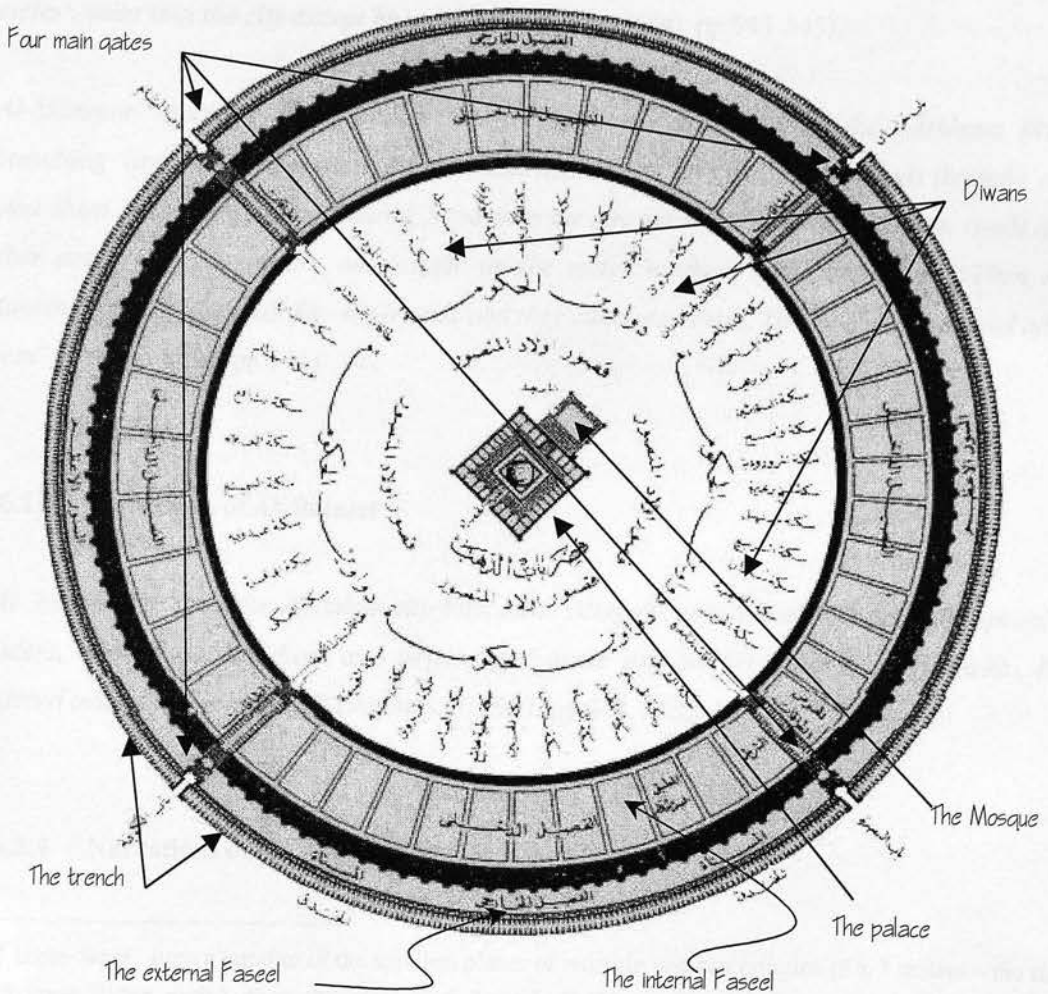


Figure 3.6.4 A Hypothetical Configuration for Baghdad (Source: Al-Manhal, 1990).

"Baghdad had three hundred thousand Mosques and ten thousand bathhouses during its early ages" (Al-Khateeb, n.d, vol.1, pp.69, 70)¹.

3.6.2.2 Narrations of Yaqout Al-Hamawi

"Al-Mansour summoned all builders from Damascus, Mussel, Jabal, Koufa and Wasit and commanded them to choose people of virtue, justice, Fiqh and honesty and engineers. He gathered all of them to supervise the construction. He also ordered them to make the wall 50 cubits wide at the base and 20 cubits at the top. He invited all engineers to demarcate territories using ash. Then he laid out the city base to be a circular one in order to make his palace in the middle provided with four gates and also constructed its wall (Yaqout, 1990, pp.543-544). "There was an incline between the gates of the city. Courts were swept everyday as dust was removed outside ... No one of Al-Mansour's followers nor others, 'even his uncles', went into the city except by walking" (Yaqout, 1990, pp.543-545).

"Al-Mansour extended one canal from the Tigris and another from the Kerkhaya River [branching from the Euphrates]. He extended them into his city by solid bonds (bottom) and lined them with bricks. Each canal went in to the city penetrating through streets, roads and other areas in both summer and winter as the water in them ran continuously. Then, Al-Mansour allocated areas for his friends and they cultivated them. They were also named after them" (Yaqout, 1990, pp.546).

3.6.2.3 Narration of Al-Balazri

"He bought the land for Al-Salam city from some village people and allocated it to his people, leaders, companions, soldiers and writers and made the markets complex in Al-Karkh... He ordered traders to build shops" (Al-Balazri, 1957, pp.414, 415).

3.6.2.4 Narrations of Al-Yaqoubi

¹If there were such a number of the smallest places of worship one can imagine (7 x 7 meters – the size of a large living room), then the area needed purely for Mosques and their access is just under 4 km². Adding the area needed for bathhouses which would represent double of Mosques, areas. This is larger than any estimate of the size of the city. The figure of 300,000 Mosques and 10,000 bathhouses is impressive and challenging, and indicates that the area of the city would never fit within the 'accepted' limits of the circular plan.

"He made four gates for the city, a gate called Koufa, another called Basra, a gate called Khurasan and another called Al-Sham. A distance of five thousand cubits [2200 cubits according to Al-Khateeb narration] separated between each two gates out of the trench. Its wall was constructed from high quality clay. He made the width of the wall base 90 cubits, tapering to 25 cubits while its height reached 60 cubits with balconies" (Al-Yaqoubi, 1890, p.9).

"The wall was surrounded by a great faseel [protective zone] of 100 cubits. The faseel had large courts with round balconies. It was marked on the top by accurately laid bricks. Next came a trench filled with water from the canal branching from the Kerkhaya River. Behind the trench were vast streets. There were four great corridors leading from the city gates; each was eighty cubits wide constructed of bricks and gypsum. Upon going through the corridor at the faseel, there was an open area paved by rocks, then a corridor at the great wall with two big steel gates, only open or closed by a group of men. All four gates were the same. So, when a person went through the corridor of the great wall, he walked in to an open place surrounded by bricks and gypsum with holes letting sun and light in but prohibiting rain from entering ...and it included houses of his sons. Each of the four gates had several arches and each also had a great golden dome surrounded by sitting places as well" (Al-Yaqoubi, 1890, p.10).

"He divided the suburbs into four quarters; each was designed by an engineer. He gave the owners of each quarter some money. So he authorised Al-Naseeb Ibn Al-Zubair and Al-Rabeei to take over the quarter from the Koufa gate to the Basra gate and gate of Muhawal and Karkh and what was attached. The owners of each quarter were entitled to an allowance of shops and markets in each suburb. He ordered them to enlarge their shops to allow each suburb to have its own big market and to make, in each suburb, clear and unclear paths and roads to organise housing development. They called each path by the name of the resident leader or people. He set the width of streets at 50 cubits and in lands and paths to be 16 cubits. He ordered them also to build in all suburbs, markets, paths of Mosques and bathhouses He also ordered all of them to make from allocations of leaders and soldiers, a known area for merchants to build and settle in and to make their market [as a place of living, sleeping and trading] available for people from all countries" (Al-Yaqoubi, 1890, pp13, 14) (See also Al-Balazri, 1957, pp. 293-297).

According to Al-Yaqoubi's account the city was fortified by three consecutive walls and surrounded by a trench full of water. There was an external *faseel* between the external and middle walls 100 cubits wide. No buildings were included in this area (perhaps to facilitate surveillance and defence). The middle wall was the highest, being 60 cubits high. There was an internal *faseel* between the great outer wall and the internal walls 300 cubits wide. This area was used for dwelling. The third wall (internal) separated the internal *faseel* from great court with

the Al-Mansour palace and the Mosque in the centre. Four main roads divided the city into four quarters and penetrated the walls and the two *faseels* between them. These roads had arcades with shops on both sides. All roads and arches were directed from the four external gates to the city centre.

3.6.2.5 Narration of Al-Tabari

“It was mentioned that when Al-Mansour decided to construct the round city, he wanted to be able to see it clearly, so he ordered it to be demarcated in ash. Then he entered corridors and courts from each gate, as all were demarcated by ash. He walked among them to look at them and what was demarcated by trenches. When he did so, he ordered that pieces soaked in oil be placed by them, when he saw it burning, he understood the arrangement and knew its shape. He ordered his men to dig its foundations according to that form, then the operation started” (Al-Tabari, 1963, vol.7, p.617).

3.6.2.6 Al-Gahez Description of Baghdad

“I have seen the great cities mentioned in Syria and Roman countries but I’ve never seen one higher, larger and better in rank and roundness than Zawra’a; that is the city of Abu Jafa’ar Al-Mansour being well-casted” (Al-Khateeb, n.d, p.77).

3.6.3 Themes of the City Formation

From the above narrations collectively given by the historians the author can elicit several points as dynamic themes of the city formation. The authority did not interfere in the royal cities such as Baghdad in respect to construction decisions related to individuals in their houses concerning such things as methods of design, building and building heights and rights of allocation as *Hareem*, *Irtifaqh* (easement rights) and others. Decisions which formed the core of the city were made centrally, i.e. location and formation of the city’s pivotal buildings such as the Mosque, Emirate palace, central court, markets and their organisation and the city wall. Allocation played the fundamental role in forming the royal cities at the expense of *Ihya’a* and land demarcation.

There are many terms and phrases used to describe the Islamic Cities. Among them are the following: designed, organised, territorised, "the layout was set" etc. The housing area of Baghdad covered about a quarter of a circle. Since the circle was divided into four areas, each contained 8-12 housing groups. Each opened at paths of solid gates from both ends. Path gates opened into two ring roads, internal and external, and did not open at the open central area. Paths were identified by the names of their inhabitants. Housing districts were made from adjoining houses. There was a relation between the suburbs and allocated areas as they were built at the same place (Al-Yaqoubi, 1890, p.14) or the suburb was bigger than the allocated area (Al-Yaqoubi, 1890, pp.18, 19).

Rabad was mentioned and this indicates two things. The first is that the area and buildings lie outside the city or are attached to the city wall from the outside. The second meaning of *Rabad* refers to the Hareem of the Mosque, which is the open yard in front of the Mosque (Ibn Manzoor, 1965, pp.1107, 1108). It is evident that *Rabad* differs from the allocated area since the former indicates a site outside the city while *Qatee'a* (an allocated part) can be inside and still outside the city.

The author concludes that *the authority did not interfere with the construction of the Rabads* except in determining the widths of streets and making sure that each *Rabad* had its own Mosque, market and latrines. The decision of external borders for each part was a central one. Its area was 538 cubits x 250 to 350 cubits, namely: 280 x 130 m to 280 x 180 m (Creswell, vol.2, pp.371). The inhabitants or their chief divided this area into smaller parts and did so without interference from a central authority.

3.6.4 Other Important Concepts Derived from Baghdad

3.6.4.1 Division of Baghdad

Al-Mansour divided Baghdad into four outlying areas and laid the responsibility for supervising their construction on three men: a leader from his army, a master of his labours and an engineer. Al-Mansour specified the scope of work each man was to do and dictated how big each area was to be. He also stated where the market area was to be located and the amount to land for each suburb.

3.6.4.2 Mosques and Bathhouses

The men Al-Mansour appointed built in all suburbs, made markets and sufficient roads with bathhouses on each side and at least one Mosque. He also ordered the leaders and soldiers to set aside certain parts for merchants' houses.

As for the number of latrines and the population of Baghdad: "*The number of bathhouses at that time reached 60,000 bathrooms. It was mentioned that each bathroom was surrounded by five Mosques as they reached 300,000 Mosques. The least number of people in each Mosque is about five people, so the whole number is about 1,500,000 people*" (Al-Khateeb, n.d, vol.1, pp.117, 118).

3.6.4.3 Demarcation of the City Centre

In the city centre, Al-Mansour built 'Bab Al-Dahab' Palace adjoined to the Mosque from the Northeast with a house for the chief guard and a shed for the chief of police. No construction, house or dwelling surrounded such part amid the vast open place which surrounded the Mosque on all sides. He allocated lands at the outskirts of Baghdad for his relatives by *Iqta'a*. People crossed to the West Bank of the Tigris to the part opposite Baghdad on the East bank using their right of owning lands by principles of *Ihya'a*.

3.6.4.4 Reason for Baghdad's Roundness

Baghdad was round because this was what Al-Mansour wished for his citadel. It expresses a model of power with him at its centre. "*The round form implies many more meanings than a square one does. Since possession is in the middle, parts become closer to each other*" (Al-Khateeb, n.d, vol.1, pp.72, 73).

3.6.4.5 Rabads (Suburbs)

In regards to the description of the suburbs (*Rabads*), Al-Yaqoubi's description gives a clear impression. Each quarter of the city included *Rabads*. For instance, the number of *Rabads* between the Koufa and Basra gates was 22, with 6,000 roads. Some allocated areas contained markets and palaces (as indicated in the *Rabad* of Wadah, for it had more than one hundred shops for writers).

Al-Yaqoubi's description of *Rabads* affirms the diversification of functions and the multiplication of constructional elements in each *Rabad* and indicates that the inhabitants did not follow a plan that was common to all of them. This indicates that people constructed what they wanted and achieved an environment in which functions and building types were numerous and diversified. (This fact is addressed in subsequent chapters).

Even though the allocated parts and *Rabads* were very large, they did not completely cover the vacant area outside the round city. There were empty lands between the allocated areas, which people could claim and vitalise by construction or cultivation which in turn could give them ownership through *Ihya'a* carried out on the basis of *Shari'a*. It is also evident that when the residential buildings became connected and the city more crowded, Baghdad was greatly expanded (although there is no historical evidence as to how this took place). If the extension had been carried out by a new allocation of land, it would have been mentioned. It most probably took place by *Ihya'a* and the act of building on dead wasteland.

Al-Yaqoubi said on page 18, "*Amongst such Rabads and allocated areas, there were houses for Arabs, soldiers and merchants and people from other countries. Paths and streets were also constructed as it was one of Baghdad's quarters*". On page 23, he said further, "*We did not mention some points related to such Rabads and allocated parts since all people built and inherited allocated areas*" and on page 21, "*the Rabad extends along the sides of the vast street has long roads; each was built for people of particular country as they all settle along the sides of the street*". This indicates the ability of people to live harmoniously in each suburb, path or street leading from the same city or amongst people having the same profession.

3.6.5 Transport of Baghdad's Markets to Karkh

Karkh is a Persian word meaning palace or house and it is said that it is also a Nabateya word (Al-Yaqoubi, 1959, pp.251-254). On page 79, Al-Khateeb Al-Baghdadi said, "*in 157 / 773 Al-Mansour transferred the markets from the city and Sharkeya city to the Karkh gate, Sha'eer gate and Muhamal that is the market known as Karkh when he ordered it to be build. He enlarged Baghdad and its suburbs and set it at 40 cubits and demolished of those parts that exceeded that amount*".

People went *en masse* to Baghdad. It soon became crowded with sellers, merchants and the needy, so it became too small for the population it had to contain. Al-Mansour ordered the city to be enlarged as he made markets for people in Karkh, South of Baghdad. He also dug canals

and relocated sellers along them and gathered people in market nodes. This allowed Al-Mansour to widen Baghdad. People were assigned to streets to maintain them. Each trading area had its own well known streets as they contained rows and shops that people of one profession or social caste or tribe utilised exclusively. In these places certain items were not sold with other items and even professionals workers from other industries did not frequent these places. Each market or trading place operated exclusively. Al-Mansour made the butchers' market locate at the end of Al-Karkh since these people had sharp knives (Al-Yaqoubi, 1890, p.246).

3.6.6 Area of the Round City (*Zawra'a*)

From different accounts of the area of the round city four population estimates can be deduced: Al-Khateeb estimated Baghdad's area near 12 km², Al-Yaqoubi estimated Baghdad's area as 7.5 km², Al-Azdi estimated Baghdad's areas as 4.5 km², Ibn Al-Jawzi and Yaqout said that Baghdad was 5.678 km² (Shaker, 1981, vol.1, pp.369, 370).

We conclude herein that there is a great difference between area of Baghdad and that of the round city. This indicates that Baghdad was not limited to just the round city, but contained the round city as well as the cultivated areas around it. The author therefore proposes that the round city was a large palace inside the original city of Baghdad due to the following descriptions:

- Each gate following the open area was guarded by a leader protected by one thousand guards.
- No one could enter the round city (the palace) except on foot.
- In one of Al-Baghdadi's accounts (as aforementioned), Baghdad had three hundred thousand Mosques and ten thousand bathhouses during its early ages. This indicates that these thousands of Mosques and bathhouses could not be contained in that palace (round city area near 12 km²). Thus, the round city was no more than a great castle inside Baghdad (see figure 3.6.5).
- The pattern of Al-Mansour's round city did not continue, but was destroyed and has since vanished. Al-Maqdisi mentioned that this took place after the year of 375 / 985. Its open area became an empty land and what remains of its buildings adjoined together is now a part of Baghdad city. As a result, this royal city formed by the authority's resolutions could not maintain its shape over time (Al-Khateeb, n.d, vol.1, pp.71, 80).

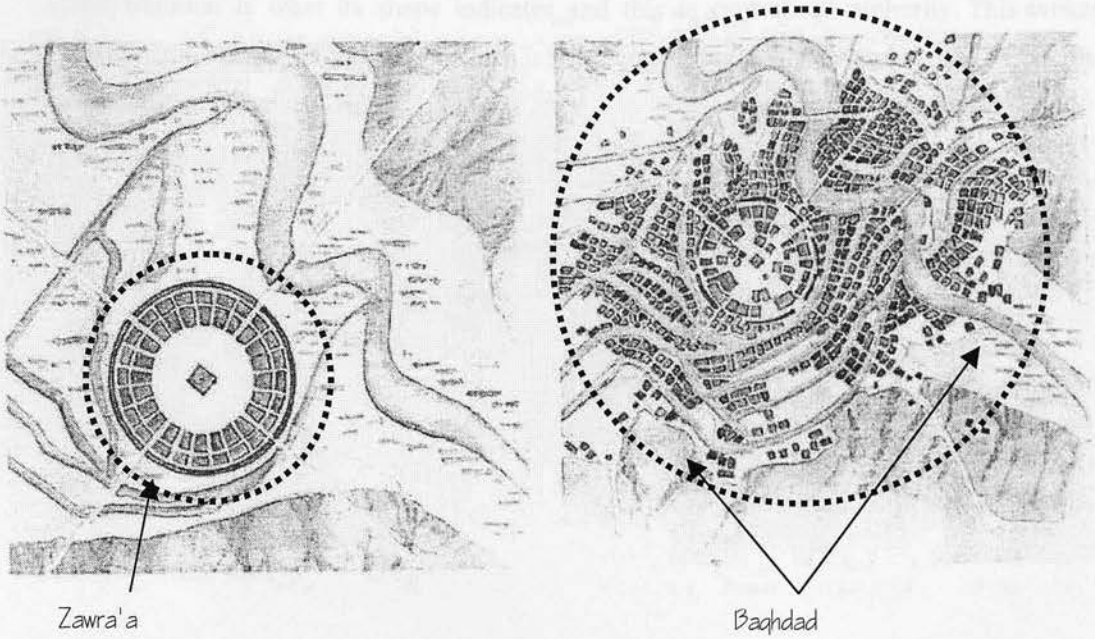


Figure 3.6.5 *Zawra'a* 'the Round City' was a Great Castle inside Baghdad (Source: Spiro Kostof, 1997, p.13).

- Accordingly, the round city (*Zawra'a*) changed through the ages. In spite of being centrally formed, Baghdad could not accommodate the change brought about by its increase in population so it took the similar form of other unplanned cities or, in other words, spontaneous, cities. This makes one wonder about the reason. Why did the society refuse to live in such a city? Why did the inhabitants re-infiltrate Baghdad after having been jettisoned to Karkh? And why did they build in the courts of the round city? Why did previously planned Islamic Cities such as Baghdad and Cairo end up in similar forms in their final urban shapes as the cities that were not formerly planned such as Koufa, Basra and Fustat? The answers to such questions lies in understanding various principles based upon rules of ownership in Islam. This is the main topic of the next Chapters.

3.6.7 Conclusion

- It seems beyond doubt that the city of Baghdad, the circular monument by Al-Mansour, hardly qualifies as a prototype Islamic City. It is much more the conceit of one powerful individual. Its plan lies outside the tradition of Islamic Cities. This is not just because of its shape - for it could be argued that others were also circular (ish) (albeit irregular), around the pivot of a Mosque, Emirate's Palace or market. Rather, what separates it from the Islamic

urban tradition is what its shape indicates and this is centralised authority. This evokes precisely the theme of ownership which is the focus of this thesis. Baghdad is, in effect, the exception that proves the rule.

CHAPTER THREE

Literature Review

Conclusion

3.7 Conclusion

3.7.1 Planning of First and Second Generation Islamic Cities

It is evident that new-fashioned cities, founded by Muslim ancestors, developed according to one scenario, as follows: The locality was vacant and Muslims could settle within it as they chose. Their religion and living needs were unified. They were all influenced by the mother model, which was represented by Al-Madinah. These cities were not originally laid out to be cities but were temporary camps for the army, which were gradually transformed into cities due to necessities of security, trade, or other reasons. Conquering Arabs who left the peninsula had considerable experience in the planning and needs of cities. Those who went out for *Jihad* (fight for the sake of Allah) came from civilised territories such as Yemen, Makkah, Madinah, Oman, Bahrain and Hijaz. Many, if not all, were urban people. These cities as a whole were transformed as per an obvious geometrical system (city centre as Mosque, Emirate Palace and Market).

This system resulted in centralised solutions. The remaining part of the inhabited area (*Al-Amer*) of the city spread from the sides of the streets, courtyards, courts and unpenetrating roads. All the major planning decisions for the location of major community facilities were made by the central authority. Thus, the external borders were set within these parameters. Minor decisions were made by the population to distribute the said lands and make allocations for smaller districts that included houses, streets, small markets, or shops, courtyards and internal courts. **The city's layout reflected the life of the society, and which expressed the will of all.**

3.7.2 Macro Decision and Micro Decisions

Here, we can distinguish two kinds of decisions in the first Islamic City as indicated hereunder:

3.7.2.1 Macro Decision

The central decision, which represents and expresses the will of the person in authority (directly or through his delegate) whom wants to construct a city. On this basis, that person determines its location and that of its important buildings such as the Mosque, Emirate palace, Public Treasury, principal market, major courtyards and basic roads (paths).

3.7.2.2 Micro Decisions

These are decisions of the individuals who form the society. They are the unknown builders who built their own dwellings in the city within the framework of customs, traditions and personal needs. On this basis, they abided by legal matters, whether *Ihya'a* or other rights of *Shari'a*. Their decisions were carried out on two levels: 1) The decisions that were included under gifted lands by the virtue of *Iqta'a*, and 2) the decisions that arose spontaneously and were formed without any external interference.

Vitalised, constructed or planted land belonged entirely to the owners and were owned under the principle of *Ihya'a*. *Ihya'a* applied to a person whether it was inside gifted land, which tells us that the person is from the tribe to whom the land was gifted. Or it was inside the inhabited area of a certain community rather than the vitaliser's community. This requires agreement and consent for making a good neighbourhood. Or it was far away from the inhabited land, in which instance it relates to a succession of *Ihya'a* by different communities or a sole group. The inhabited area was developed and houses were adjoined together, so districts were formed that were attached to the original part of the city.

3.7.3 *Iqta'a* and *Ihya'a*

Iqta'a was usually carried out in the initial stages of construction of the new cities, and was instituted near and around the centre. It applied to the Sultan's servants and others who were close to him, not for the public. However, *Ihya'a* existed throughout the city as a whole and applied to the area of *Al-Amer*. But from historical sources, we find that the application of *Ihya'a* decreased the closer one came to the city centre, and increased towards the city's outer areas. Furthermore, in areas where the application of *Ihya'a* was still available (i.e. whether there remained any unvitalised land) an individual was most likely to select an area by a main

road leading from it. This shows that *Ihya'a* followed a distinct and ordered pattern to demonstrate a planned environment which has an image of obvious relationships at the level of planning.

When *Ihya'a* is applied inside parts of the city, it is governed by a local organisation and its planning is performed by the population from the very beginning. If it is outside the said parts, *Ihya'a* may be applied at main streets or their extensions, around the markets which are outside, or at walls of the city, or around or close to the water well. *Ihya'a* can also be utilised by people to cultivate dead wastelands. In the three past cases, the following has been noticed: *Ihya'a* exerts control on city limits, development, and multiplication. The existence of the streets enables the vitaliser of land to know that streets have certain reliable and dependable limits of width as well as a level of tolerance for development. This will be addressed in the following chapters.

This tolerance eventually gave form to the street. The initial street might have been large and straight but its shape changed through time by virtue of being encroached upon by people until it reached its ideal state in which its width could not be further reduced. The road might not actually exist as a physical path having two edges demarcating its width.

On the basis of *Ihya'a* came an accumulation of building in those outer areas far from the city centre. These vitalised lands (almost exclusively occupied by houses) began to be located closer to each other and abutted along common walls as adjoined buildings with unplanned streets. However they soon became planned ones because they were known and governed under laws of *Shari'a* which formalised them as soon as they were shared through the accumulation of *Ihya'a* decisions and an increase in inhabited lands. There were also the rights that governed the formulation of the new environment as highlighted later in this research.

3.7.4 Conclusion

- Roads, courtyards, courts, shapes of vitalised parts, location of markets and other such things were demarcated through allocation, planning and doctrine set forth by the central authority. *Ihya'a* determined everything else that dealt with the land: the vitalised land that was there, and the main streets (*Tareeqh Al-Muslimeen*) which were initially demarcated and ordered by the authority. The street that was formed was demarcated as an 'open area' by virtue of the accumulation of *Ihya'a* decisions.

- In addition, as the central authority demarcated courts and major locations of markets outside the cities (as indicated in Baghdad), groups of settlers vitalised and owned the lands and had their own *Hareem*. They also had *Ihya'a* rights of flow, passageway and so on. Thus, the accumulation of *Ihya'a* became the reason for the existence of these yards and open areas. However, the permissibility of renting and change of use led to the presence of markets along major and minor roads. This also led to the existence of these markets and the inclusion of different kinds of functions.
- It cannot be stated that the streets of most Islamic Cities are demarcated, nor that without planning. The city was founded in view of interacted decisions at various levels, which affected the shape of the city and provided it with its unique form.
- The Islamic City created a regulated environment for a people who knew all legal issues which governed land development and change within their environment, as well as their rights and how to preserve them environmentally. *The environment became stable* as the said rights were promulgated in the shape of laws. The legal rules led to the creation of customs and traditions, that contrast substantially with the situation of today. The Islamic City was a regulated environment governed by laws, which in turn regulate it. It is also a stable one as all individuals within this environment know the rights associated with their properties as well as the limits of those rights.
- All the laws governing the city were entirely Islamic ones. Their setting and implementation were supervised by the Caliph himself as he interpreted them from acts of the Prophet ﷺ while innovating some others, which later became design and/or planning principles for the Islamic City.
- All of the first cities were located at the edge of the desert. The cities did not extend further into the agricultural lands until seventy years later when the state became stable and secure. This is what happened in Wasit, Ramlah, Mussel and Shiraz, which were built in agricultural areas. However, there was good reason for this since they were close to the Arabian Desert.
- The tribal unit constituted the housing area in the plans of the first cities since the warriors in conquering armies were from particular tribes. The immigrants from the Arabian Peninsula followed a tribal basis as well. Thus *Divans* and awarding records were also organised along tribal lines. The tribal system changed as a result of an increase in

immigration from other nations. The population of cities became a non-tribal mixture. Later the profession of different groups of population nucleated in particular urban quarters.

- Attempts to associate the Islamic City with such pejorative terms as ‘mess’ refer directly to residential parts with their winding streets. The reason for this image actually stems from the formation of an urban environment due to laws of *Shari’a* which enabled the population freely to locate themselves under the criteria of *Al-Darar*, *Al-Hareem*, *Al-Irtifaq* and such principles of land ownership. The ‘mess’ is actually an organised environment known by its inhabitants because they formulated it. It is also a stable environment by virtue of the stability of its constructional customs.
- The growth seed of the Islamic City lies in its nucleus and always emanates from the collective Mosque, Emirate and markets and sometimes from an open area or vast square for trading and the gathering of people. This tradition has been carried out in every Islamic City from the time of the Prophet’s Madinah, connecting together religion, politics and lifestyle.

PART TWO

Ownership of Land

CHAPTER FOUR

Ownership of Lands

CHAPTER FOUR

Preface

This chapter focuses upon the principles of land ownership that are based upon *Shari'a*, the divine law of Islam and therefore the unchanging law of Islam. In that these concepts have yet to be applied in cities with large Muslim populations, it is difficult to determine the effect they would have on planning and urban development today. However, since they reflect a unique approach to land distribution and control, it is anticipated that they would become manifest in cities with markedly different land use patterns. *Shari'a* embraces the full spectrum of the physical properties associated with land location, climate, exposure to the sun, soil, topography, types of flora and fauna, availability of water, surrounding uses and so forth. It groups development regulations into two broad categories of *immovables* and *variables*. *Immovables* constitute the environmental and physical properties of land. *Variables* include existing constructions as well as the political, social and economic constraints under which land is developed.

Immovables are represented in four aspects of *Shari'a* as worship; civilities and ethics; customs and property dealings. Under the rubric of *Worship* the rituals of prayer (*Salat*), giving of alms (*Zakat*) and pilgrimage (*Hajj*) set forth conditions regarding land distribution and development. *Civilities* and *ethics* address one's behaviour, dress and gaze in public areas as well as requests for permission to pass through private property. Customs consider the traditional ways in which land has been developed in particular regions. Regulations centring on *property dealings* are organised about certain types of constructional and infrastructural development. Construction regulations also identify necessary buildings that every community must include as well as building types, exterior facade treatment and aspects of construction that are prohibited. In general, Quranic laws had a very tangible impact on construction and expressed the will of Allah as to what could and could not be built. In cases where prohibited building types existed Quranic law demanded that they be removed before new construction could be started.

In directly addressing the ownership of land *Shari'a* identifies types and phases of ownership and notes how it is intended to shape the urban environment. In general ownership refers to the proscribed (legally delimited) ways in which one can possess, exploit, or dispose of land. Under long established precedents emanating from the application of *Shari'a*, these proscriptions have

become highly refined as they have been applied to an extremely broad and complex spectrum of circumstances and situations.

Under *Shari'a*, types of land possession are categorised in three major groupings in respect of: its locality; its owner; or its image. The latter type is not of great importance to the subject of the thesis.

Al-Milkiya is the legal term that applies to the property or utility of the property that one possesses. Also, it is a legal concept that indicates and describes the rights that one has in the enjoyment or utilisation of land. The Prophet ﷺ elaborated further on this concept when he stated that an individual also has the right to garner a profit from the land should he rent it to someone else.

Judge Hussein Ibn Mohammed Al-Marwazi mentioned some additional aspects of land ownership. He stated that possession of land should serve to compensate one for his daily needs (Ibn Taymiya, 1986, vol.5, p.215). Judge Ibn Abdul Wahab indicates that: "*possession is a legal concept manifested in the ownership of real estate or its utility* [i.e., the right to engage in subsistence agriculture or the right to garner rent from it by leasing it to others]" (Ibn Abdul Wahab, 1973, p.135).

Ibn Taymiya defined it in the following manner: "*Possession is the legal power of the disposition of Raqaba* [Property]" (Ibn Taymiya, 1986, vol.5, p.216) Thus, *possession* can be defined as a connection or legal relationship between man and land as per a certain nature which gives him the right to enjoy it or dispose of it unless some unexpected circumstance prevents him from doing so.

The concept that ownership can join a legal man-land relationship with the subsequent right of enjoying or disposing of it has had a profound impact on the development of the traditional urban environment. Thus, this chapter covers basic concepts of the ownership of land. These concepts and their hidden factors affecting the environment form the research methodology of this thesis.

CHAPTER FOUR

Ownership of Lands

4.0 Introduction

This chapter presents the historic background of *Shari'a* and the juristic cases upon which land ownership is based. Thus, it introduces the theoretical framework of this dissertation. In this regard it brings forth a new way of viewing the traditional environment as a pattern of settlement in Islamic society.

This framework is important because it elaborates its outlines and highlights, by virtue of proof and evidence from original sources (juristic rules from Quran and Sunna), all the issues of land ownership and development upon which the Islamic City is based. The research in this dissertation has been presented through a systematic assembly of analytical drawings illustrating the way buildings and spaces in the traditional Islamic City evolved under *Shari'a*.

4.1 Ownership Effect on the Urban Fabric of the Islamic Traditional City

What rules governed and formed the general shape and image of the traditional city? What formed the bases for the general shape of realties and properties and therefore for land and houses in the traditional Islamic environment? What caused the seemingly chaotic zigzag composition of the urban fabric, in which not even the party walls between individual properties are straightforward? Moreover, who decided the shape of roads and urban spaces or controlled land and its use to ensure the preservation of the environment?

This chapter examines the nature of individual ownership of all traditional environmental elements and the lack of central government authority or other external power to remove or adjust rights of ownership. This situation was made possible in that people were able to take advantage of the juristic legal interpretations, which originally formed the built environment and established the conventions that governed the land.

The author's particular concern here is the ownership laws and regulations with their principles that generated the rules of regularisation for traditional environments and maintaining stable urban centres. This chapter covers land and property ownership; its concept, types, elements and usage from the point of view of Islam.

4.2 Some Definitions

4.2.1 Right of Ownership of *Raqaba*

Raqaba means land property itself. Its owner has the right to assign ownership in whole or in part, by selling or gifting or by enacting other means of disposition to assign ownership. The owner has also the right to assign, by virtue of possession, rent, lending or gift, one of a 'bundle of rights' such as possession of utility (*Al-Ikhtisas*, or enjoyment right), use or exploitation. The owner maintains *Raqaba* ownership and the right to dispose of the land. He can also sell or rent out rights of use, or dwelling rights, or a certain easement right (*Al-Irtifaqh*). The Ownership right gives its owner the right of full disposition of ownership of property, *Raqaba*, use and exploitation.

4.2.2 Right of Disposition (*Haqh Al-Ta'ssaruf*)

This term is used when that the owner has two rights: the right of use and the right of exploitation. The right of use, *Haqh Al-Istima'al*, is the enjoyment by the owner of the possessed object and the use of it whenever he wants to enjoy it. He can use the house for dwelling, or trading, by, for example, making part of it into a shop. The right of exploitation, *Haqh Al-Istighlal*, is the enjoyment by the owner of the possessed object and its income derived through renting or planting the land.

4.2.3 Utility Right *Al-Manfa'a* and Enjoyment Right *Al-Intifa'a*

The utility right *Al-Manfa'a*, gives the owner right of use and exploitation without disposition of *Raqaba* ownership. The enjoyment right *Al-Intifa'a*, gives the owner only a right of usage without exploitation or property ownership.

4.3 Possession in Islam

The next part of this chapter covers the concept of ownership from different aspects such as what it means, its different types, reasons for various types of ownership, methods of obtaining it and its impact on the traditional environment.

4.3.1 Linguistic Meaning of *Al-Milkiya* (Ownership)

Ownership has different definitions: “*Possession is man’s competence [capability and eligibility] of a certain object he assigns or gives*” (Al-Abadi, 1974, vol.1, p.150); “*It is containment of the object and capability of appropriation and disposition*” (Al-Zobaydi, 1985, vol.3, p.180); “*And possession is containment of the object and ability of deposing of it*” (Ibn Manzoor, vol.10, p.492). Thus, we can define ownership as **an attribute of an object, which entitles a person legally to its right of enjoyment and disposition of it alone within certain limitations.**

4.3.2 Legal Meaning of Ownership

From Islamic jurists come several definitions:

4.3.2.1 Al-Malikiya Jurisprudence

Possession is a legal concept that indicates and describes the rights one has in the enjoyment or utilisation of a piece of land. “*Possession is a legal concept destined in the property or utility, which requires one’s ability (of what is added) of enjoyment of that possessed and to be compensated as it is*” (Al-Karabisi, 1873, vol.3, p.209).

On page 216 Al-Karabisi elaborates further “*Possession constitutes legal permission to own real estate or its use or to garner a profit from it should one rent it to someone else, which requires its owner’s capability of enjoyment of this realty or utility, or taking compensation for it as it is*”.

4.3.2.2 Al-Shafi'iya Jurisprudence

"Possession of land serves to allow a man to meet his needs" (Abi Shuga'a, 1973, pp.111, Al-Marwazi, 1953, 107,132,134,150); *"Possession is a legal rule represented in a realty and the utility of land which enables one to enjoy it and gain compensation for its use"* (Al-Souti, 1959, p.316).

4.3.2.3 Al-Hanbaliya Jurisprudence

"Possession is the legal power of disposition of Raqaba" (Ibn Taymiya, 1986, vol.3, pp.347, 348).

Thus, **possession** can be defined as: a connection or a legal relationship between man and land to enjoy it as per a certain nature, which would give the right to dispose of it unless some unexpected circumstance prevents him from doing so, or to enjoy it alone if it does not hinder anyone.

On the basis of the afore-mentioned definitions, the term should include the legal relationship between man and land and as part of this, the power of disposition of what he owns and enjoyment of this possessed object (Al-Khafeef, 1963, p.719).

This simple concept of ownership influenced the formation of the traditional environment considerably. Various aspects of the relationship between the possessor and the possession affect the formation of the environment. In addition, the capability of disposition of what is owned, provides the owner with complete freedom to dispose of any possession in many ways such as through gifts or charity, mortmain etc. **This had a great effect in emerging of territorial linear changes in the traditional city.**

4.4 Rules Governing Ownership

There are two rules that affect Ownership: the need to possess and the right to dispose of that which one possess (see figure 4.1).

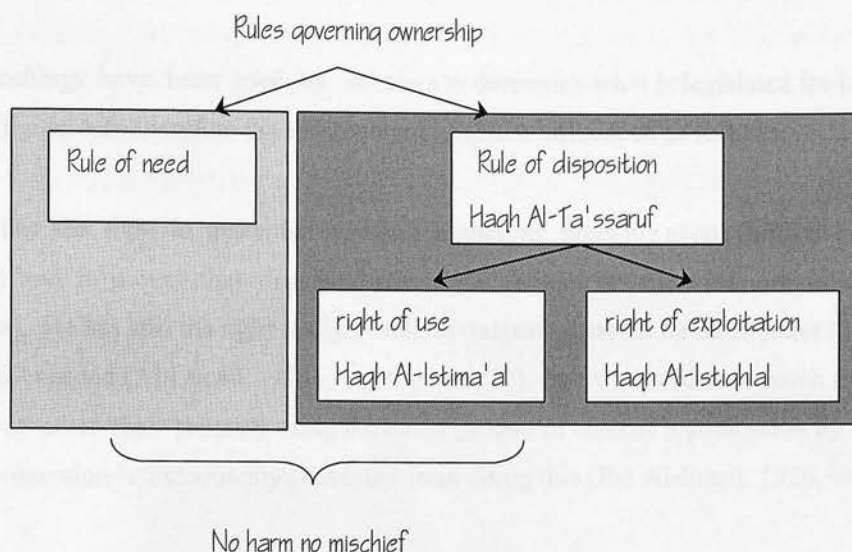


Figure 4.1 Rules Governing Ownership (Source: the Author).

4.4.1 Rule of Need

Shari'a provided ownership rights for each human being even as a foetus in his mother's womb and states "need" as the reason for possession. "Need is the reason for possession. So if objects were to remain common and public in this world, people would fight over them. Since the foetus that is about to be born has a need in his life, then he owns property and funds unanimously" (Al-Qurafi, 1936, vol.7, p.283). "The dead do not have a need left, so they do not own..." (Al-Abadi, 1974, vol.2, p.21). "*Shari'a* has a rule which deals with possessing for the sake of need. Thus, what is not needed is not legislated for possession" (Al-Qurafi, 1936, vol.4, p.17, Al-Abadi, 1974, vol.1, p.213).

4.4.2 Rule of Disposition Right

As it is indicated in the definition of ownership meaning, "Possession is the legal power to dispose of what is possessed" (Ibn Taymiya, 1986, vol. 3, pp.347, 348). "Possession is a legal rule represented in a realty or utility, It requires that the one reserves it and should have the power of its enjoyment and its compensation as it is" (Al-Souti, 1983, p.316).

4.4.3 Aspects of the Effect of the Two Rules on the Traditional Environment

These teachings have been used by scholars to determine what is legislated for possession at first (see figure 4.2), therefore the environment has been influenced as follows:

- Man has the right to make his building higher to meet his needs (high rise rule and air rights) and in a way that does not harm his neighbours or others (the principle of no harm (*Darar*). He has also the right to dig a well, or deepen whatever he likes under his building if it is so needed (Al-Qurafi, 1936, vol.4, pp.16, 17). One who wishes to reach the water of a well, or other real property using the under ground of another's possession by virtue of his own possession is undoubtedly prevented from doing this (Ibn Al-Shaat, 1926, vol.4, p.71).

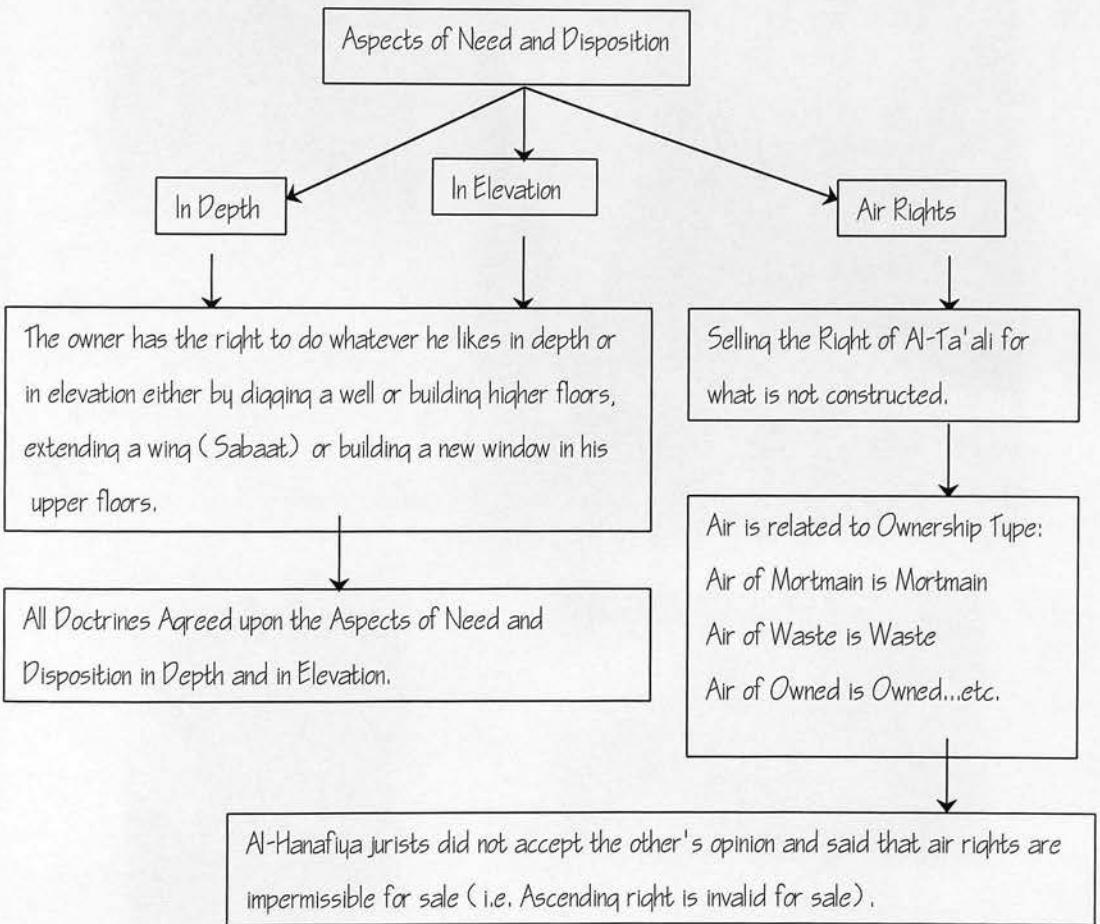


Figure 4.2

Aspects of Need and Disposition Rules in the Traditional Environment
(Source: the Author).

- Permission of Al-Ta'ali right, i.e., ownership of 'air rights', asserts that when one owns a piece of land or building, what is underneath it as well as above it is also owned [except oil and/or mineral rights which are held in public ownership]. Al-Hanbaliya and Al-Malikiya jurists allowed selling air rights to the one who enjoys it, as part of the building's rule; *"the air rule belongs to buildings' rule as agreed upon by Al-Malikiya jurists on this principle. So mortmain air is a mortmain, open air is free, dead land air is dead and possessed object air is possessed, even if the owners stipulated to sell air for someone else to enjoy"* (Al-Karabisi, 1873, vol.4, p.40) (see figure 4.2 and figure 4.3).

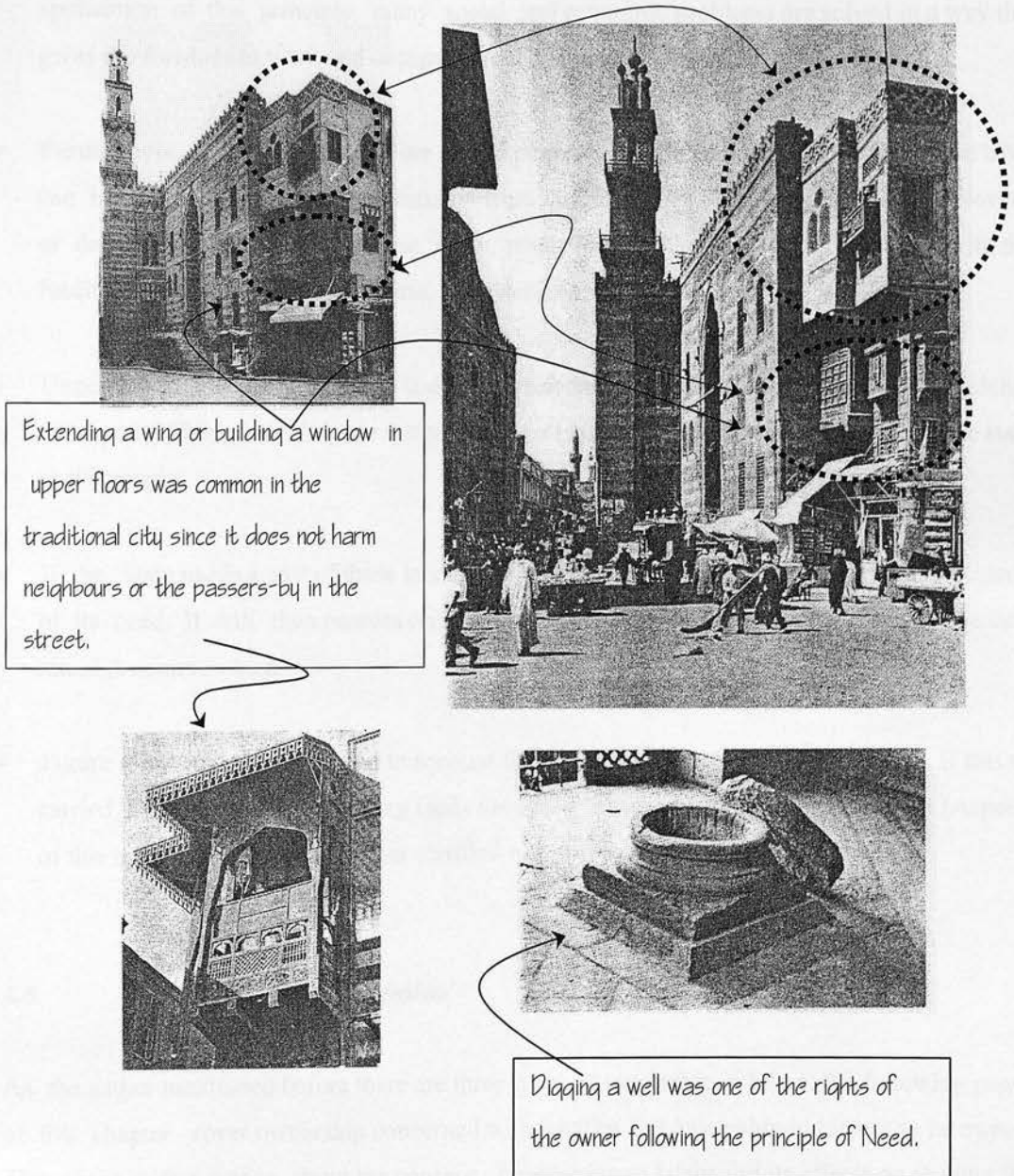


Figure 4.3

Permission of Al-Ta'ali Right and the Ownership of 'Air Rights' (Source: Abdul Baqi I., 1991, pp.130, 143, 258).

- Permission to sell what one has constructed, known as *Milkiyat Al-Tabaqaat* (ownership of floors). All doctrines agree upon the permissibility of selling what has been constructed.
- In view of application of the need rule with the Hadith, “*Land is for Allah and the creation is for Allah, so whoever vitalised a dead land [that he needs] it is his*”, so the land is possessed for need and, as much as the need is concerned, ownership of land is considered.
- Unpossessed lands are therefore not even owned by the state but by all Muslims. Upon application of this principle, many social and economic problems are solved in a way that gives the freedom to work and occupy as much land as is needed.
- Furthermore, by application of the rule of disposition right of what people own, these land can be used without seeking permission from the authorities. A man has the right to elevate, or deepen his building, or to use it for whatever he likes, so long as it accords with the Hadith *no Darar, no Dirar* (no harm, no mischief).
- Unpossessed lands, like deserts and dead waste lands, are not properties and do not belong to anyone. Thus, since they are not possessed, disposition of them is not allowed by the state or the people.
- If the state needs a part of these lands, it should vitalise them in accordance with the extent of its need. It will then possess only that part of the land it has vitalised otherwise the land remains common land.
- Future need could be estimated to account for possession or protection by the state. If this is carried out, it leaves the remaining lands vacant for whoever wishes to vitalise them (Aspects of this impact of *Ihya'a* are further clarified in detail in next chapter).

4.5 Types of Property Possession

As the author mentioned before there are three types of ownership in Islam, the following pages of this chapter cover ownership concerned with locality and ownership in respect to its owner. This gives a fair image about the concept of ownership in Islam and its effects on shaping the urban fabric of the traditional Islamic City (see figure 4.4).

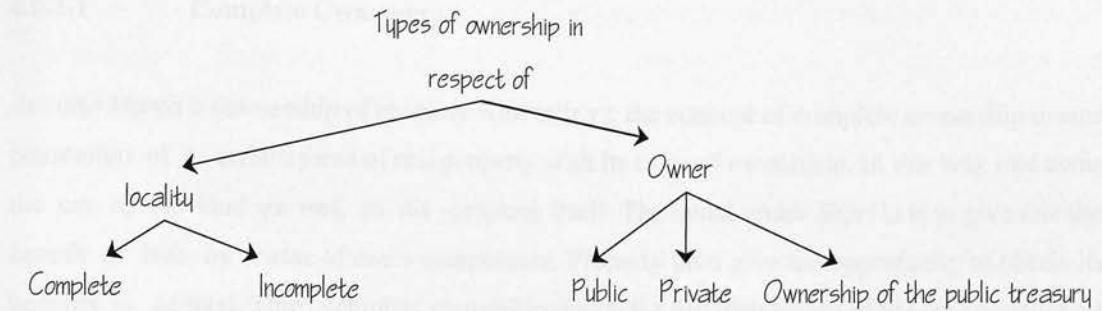


Figure 4.4 Types of Ownership (Source: the Author).

4.5.1 Types of Ownership in Respect of Locality

Ownership in respect of locality can be divided into complete and incomplete ownership. Complete ownership means realty ownership (lands, houses, shops etc.) with its attendant utility. Incomplete ownership refers to ownership of either property or utility. Ownership is represented in four ways: “ownership of property and utility, ownership of property without utility, ownership of utility without property and enjoyment of utility without the ownership of property or utility [right of *Al-Ikhtisas*]” (Ibn Rajab, 1933, p.195). The first is called complete ownership, while the other three types are incomplete ownership (see figure 4.5).

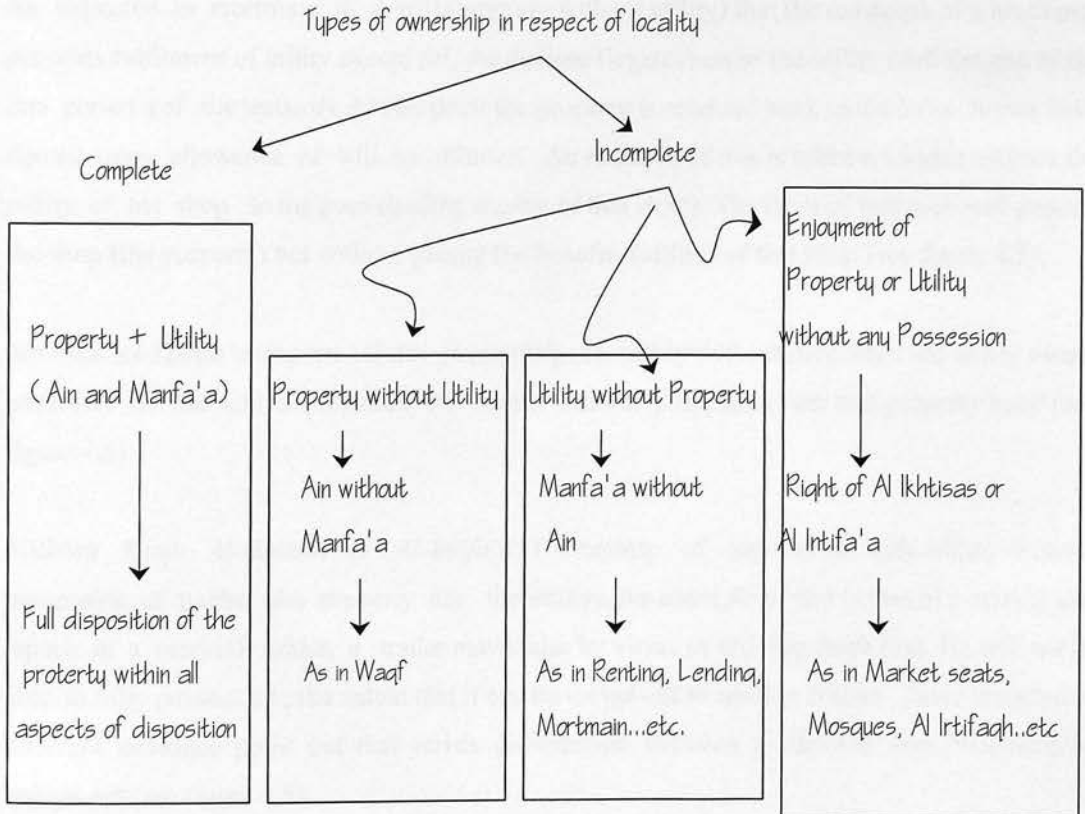


Figure 4.5 Types of Ownership in Respect of Locality (Source: the Author).

4.5.1.1 Complete Ownership

Ain and Manfa'a (ownership of property with utility): the concept of complete ownership means possession of a certain piece of real property with its rules of ownership. In this way one owns the use of the land as well as the property itself. The intent under *Shari'a* is to give one the benefit of land by virtue of one's competence. Property laws give the opportunity to obtain its benefits in general. Thus, complete ownership stands for full disposition of the realty within all aspects of disposition, whether by use or exploitation of its *utility* by selling, purchasing and gifting to charity or mortmain. The owner has complete entitlement to the land under the laws for disposition. A person thus may own a land by *Ihya'a*, i.e. he must make this land productive by construction or planting, after which it becomes possible to sell or grant all or part of it, or use it for a dwelling or place of work, rental, etc. (see figure 4.5).

4.5.1.2 Incomplete Ownership

Milkiyat Al-Ain bidoon Al-Manfa'a (ownership of property without utility): disposition of land is considered incomplete by either of a lack of ownership of utility, realty, or realty and utility. As indicated in mortmain in a will (property without utility) that the existence of a hindrance prevents fulfilment of utility except for, the devisee (legatee) owns the utility until the end of the due period (of the testator). At this point the property is returned back to the heirs. Jurists have agreed upon allowance of will by utilities. An example of this is when a testator endows the utility of his shop to the poor (trading money of that shop). The heirs of that man will possess the shop (the property) but without getting the benefits (utility) of that shop (see figure 4.5).

Milkiyat Al-Manfa'a bidoon Al-Ain (ownership of utility without property): the utility owner possesses its use and exploitation for others without possessing the real property itself (see figure 4.5).

Milkiyat Haqh Al-Ikhtisas or Al-Intifa'a (ownership of enjoyment with utility without possession of neither the property nor the utility). An example of this is that of a market seat (space in a market), which a trader may claim by virtue of arriving there first. He will not be able to fully possess it to the extent that it can be rented out to another comer. Texts included in different doctrines point out that jurists differentiate between possession and ownership of enjoyment (see figure 4.5).

Since the right of *Al-Ikhtisas / Al-Intifa'a* is an essential concern of the urban environment, its development is important to review the concepts of *Al-Ikhtisas* in different doctrines of jurisprudence.

Al-Shafi'iya Jurisprudence: “*The difference between possession and Al-Ikhtisas is that possession relates to realities and utilities but Al-Ikhtisas relates only to utilities*” (Al-Zarkashi, n.d, p.336, 337). They considered the saying of Prophet Mohammed ﷺ “*The Muslim who precedes another Muslim [i.e. as in market seats] it will be his own*” describes a sort of possession of the utility not property, so it is not valid to be sold or gifted.

Al-Malikiya Jurisprudence: “*Right of Al-Ikhtisas deals with the use of land such as Iqta'a and preceding to allowable seats and places, as market and Mosques seats [seats inside Mosques for praying, or for sitting etc.]*” (Al-Qurafi, 1936. vol.1, p.130). That means that whoever comes first to a place it will be his (to sit and use until he leaves it) by the right of *Al-Ikhtisas*.

Al-Hanbaliya Jurisprudence: this refers to utilities of vast markets where selling and buying may take place in shops. “*The one who precedes has its right [i.e. to enjoy and exploit it]*” (Ibn Rajab, 1933, p.193).

Al-Hanafiya Jurisprudence: In view of legislation, this covers what a man is competent of; on the basis of enjoyment and easement, not by full disposition, such as house path, access to drinking water and the road course, as he might get use of the water flow from his neighbour's roof or his house path. If he wishes to dispose by possession in selling or gifting or similar arrangements, he cannot do so (Al-Maqdisi, 1978, vol.6, pp.15, 195) (see figure 4.6).

If a person only surrounds a dead land by stones or any other means he would not own it outright since dead lands are owned by *Ihya'a* and *Tahjeer* can only be carried out by putting stones or lines around land to be vitalised as a marker to prevent others from taking it. This does not yet constitute *Ihya'a*, so the land is not owned or qualified to be sold, gifted, or given to charity. However, the claimant has more right to it than anyone else, who may not disturb him since he was first to claim it.

Preceding is one of the primary reasons of ownership in general as Prophet Mohammed ﷺ said, “*Mena [a place outside Makkah] is a place for one who precedes*” (Al-Termizi, 1968, vol.3, p.248, Al-Shawkani, 1988, vol.8, p.25).

As a result it is necessary to differentiate between two types of *Ikhtisas*: *Ikhtisas* which needs full disposition as indicated in the property ownership definition and *Ikhtisas* which does not need full disposition as pointed out in previous juristic definitions.

Therefore, competence differs from possession: in that the owner of *Ikhtisas* is not allowed to dispose of the property and in consideration of locality such as the utilities of markets, roads and Mosques, i.e. public utilities. *Al-Ikhtisas* also applies to dead lands marked by *Tahjeer* as an introductory action of *Ihya'a* (see figure4.6).

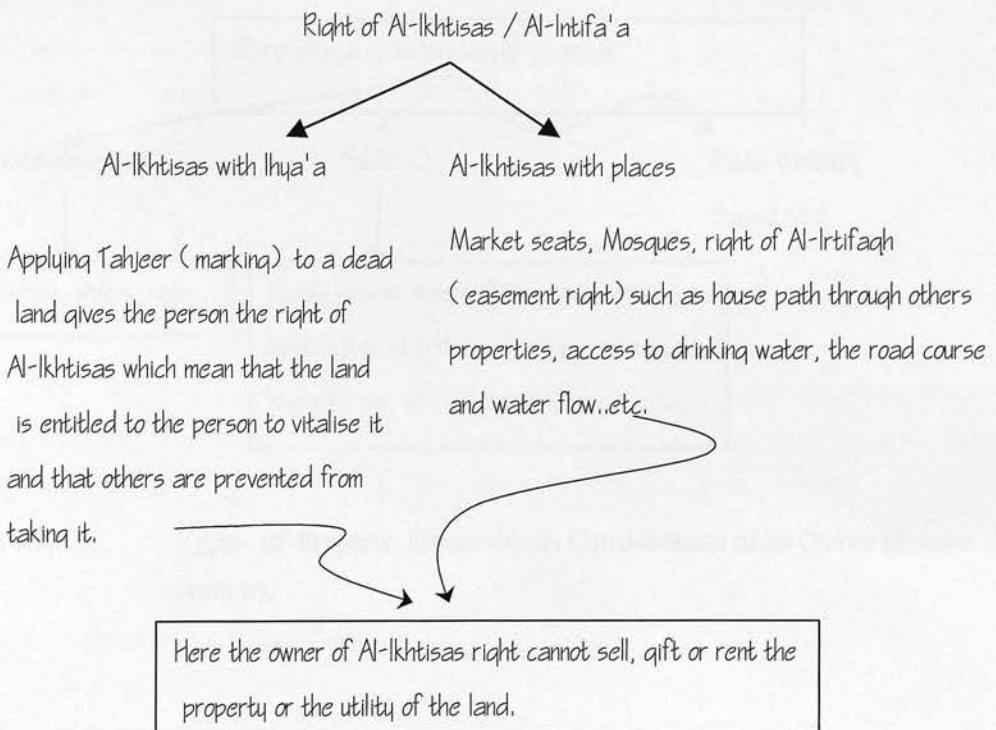


Figure 4.6 The Concept of *Al-Ikhtisas* in *Shari'a* (Source: the Author).

4.5.2 Types of Property Ownership in Consideration of its Owner

4.5.2.1 Private Ownership

This thesis, in most of its chapters, is a study of the principles and rules of private ownership, such as *Ihya'a* and *Darar* and the effect of these on the traditional environment. This is explored in detail in the next chapters.

4.5.2.2 Public Ownership

Shari'a has set a fixed criterion to distinguish between what is valid and what is not valid under individual possession.

There are several aspects of public ownership in Islam such as: public utilities; sanctities; pasture; mortmain and endowment lands (*Waqf*), booties and loot (*fay'e*). These different types of possession apply to the subject of the public ownership. The author discusses them as they bear strongly on understanding the urban fabric of the traditional city (see figure 4.7).

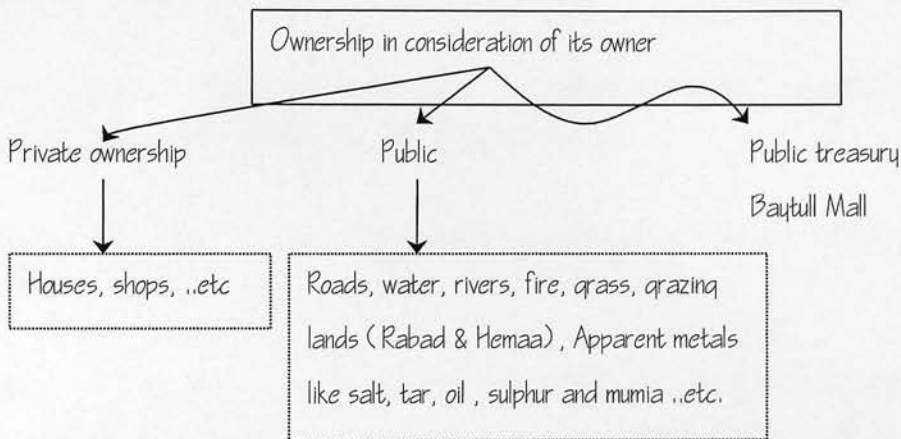


Figure 4.7 Types of Property Ownership in Consideration of its Owner (Source: the Author).

4.5.2.3 Definitions

Hema / Sanctity: This is the allocation of a part of dead land not owned by anyone for public benefit. *Hema* transfers the individual right to vitalise and own to public ownership, so people may not do this individually. It remains mortmain for Muslim's benefit.

Waqf / Mortmain: This refers to the dedication of lands, houses, shops, schools etc. for Muslim's benefit as occurred when the Prophet Mohammed ﷺ allocated the lands of Bani Nadeer and half of Khaibar for Muslims. The second Caliph Omar ؓ allocated land in Sawad (an agricultural area in Iraq) in the same way. Many jurists consider mortmain as an aspect of public ownership since *Waqf* utility is paid to a certain group of the nation.

Sawafi / Chosen Lands: These are lands selected by the governor for the public treasury, as Omar Ibn Al-Khattab selected lands left by Emperor Kesra and others for the public treasury “*This kind of land is not allowed to be given as Iqta’a [allocation] as it has been selected for public treasury as property for all Muslims*” (Al-Mawirdi, 1960, p.163).

Ghana’em / booties: These are the property for *Mojahedeen* (soldiers) before distribution as they share their ownership. These properties are not allowed to be allocated to any individuals to the detriment of others (Ibn Abdeen, 1979, vol.4, p.159).

Fay’e: are the lands gained without being won by *Jihad*.

Rikaz: a specific amount of money given to the Public Treasury. It represents one-fifth of plunder / spoils, minerals and treasures buried in the earth.

Gizya’a: money taken from non-Muslims and put in the Public Treasury for their protection and defence.

Zakat / Alms giving: a specific amount of funds / money taken out annually from the wealth of any Muslim when the amount of this wealth / money reaches a standard level known in *Shari’a* (i.e. 2.5% of the money) and put in the Public Treasury / *Baytull Mall*.

4.5.2.4 Ownership of Public Utilities

amenities such as rivers, roads, bridges and lands left around villages to be used for grazing for their people (known as *Hemaa* or *Rabad*) are for everyone’s use “*The Tigris and Euphrates are for all Muslims as they are partners in them*” (Abu Youssof, 1962, pp.97, 98).

Ibn Qudama also wrote “*All streets, paths and yards between construction may not be vitalised by anyone whether these are wide or narrow, because they are enjoyed by all Muslims and their benefit is related, so these become like their Mosques*” (Ibn Qudama, 1970, vol.5, p.426). Al-Souti, mentioned “*It is not allowed for anyone to construct on the riverside for shelter or other reasons since it is a utility for all Muslims*” (Al-Souti, 1959, vol.1, p.213). Then he adds, on page 209 “*Hareem of inhabited land cannot be possessed by Ihya’a. Hareem is: near places in which one needs full enjoyment such as the road, water flow and similar public benefits*”.

These resources are not considered valid for individual possession, since individual ownership of them nullifies the enjoyment of their potential. Therefore, *Shari'a* forbids individual possession. This is elicited from the saying of Prophet Mohammed ﷺ “*Muslims are partners in three things: water, grass and fire*” (Sakher CD, 1996, Ahmed, no.22004, Ibn Maja, no.2463, Abu Dawood, no.3016) and salt was added in another narration.

This Hadith acknowledges matters that should be common among all Muslims, as each one enjoys them, provided that they do not thereby harm others. Al-Shafi'ie said, “*Minerals apparent in allowable lands are not the property of someone*” (Al-Shafi'ie, 1904, vol.3, pp.265, 266). Salt in mountains, for example, should not be confined to the benefit of one because people have equal entitlement to it.

This law applies to all apparent minerals as metal, oil, tar, or sulphur or *mumia* (a Greek word which stands for any substance extracted from the land and used as medicine) (Ibn Manzoor, 1965, vol.4, p.341, Al-Rafi, 1929, vol.2, p.288), or other minerals. One has the right to seize solely and no authority / sultan is allowed to take these for himself or for a group of people because all minerals, as with water and grass, cannot be the property of a single person.

Thus, the sharing among people of water, grass, fire, salt and so on formed the necessary pillars of traditional life. The more recent expansion of people's needs towards more requirements permits the state / *Imam* to distribute these among people to prohibit monopoly, manipulation and public mischief.

Many characteristic buildings in Islamic Cities like the *Hammam* (bathhouse) and *Sabeel* (watering place) exist to freely distribute common commodities beneficial to public well being to all who require them. The authors expressed this concept “*Everything that is seen as a community utility, the community cannot dispense with*” (for more details review Sobhi Al-Saleh, 1983, p. 377, Mostafa Al-Seba'ie, 1974, p.133, Al-Nabahani, 1970, pp.177, 178, Al-Malki, 1963, pp.79, 80).

4.5.2.5 Ownership by the Public Treasury (*Baytull Mall*)

The main sources of income for the Public Treasury are: *Zakat* (Alms giving) which represents the main source for *Baytull Mall*. Then comes the others such as *Rikaz*, *Gizya'a* and troves and legacies for Muslims who have no heirs (see figure 4.8).

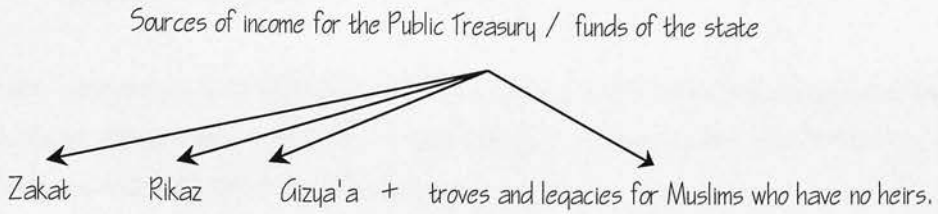


Figure 4.8 Sources of Income for the Public Treasury (Source: the Author).

4.6 Rules of Enjoyment of Public Spaces

Jurists were interested in classifying rules for the enjoyment of public spaces such as street, roads, yards, courtyards and others. They established the general rule that *“All people should enjoy their utilities in all aspects provided they do not harm others in their enjoyment”* (Ibn Qudama, 1970, vol.5, p.531) (see figure 4.9).

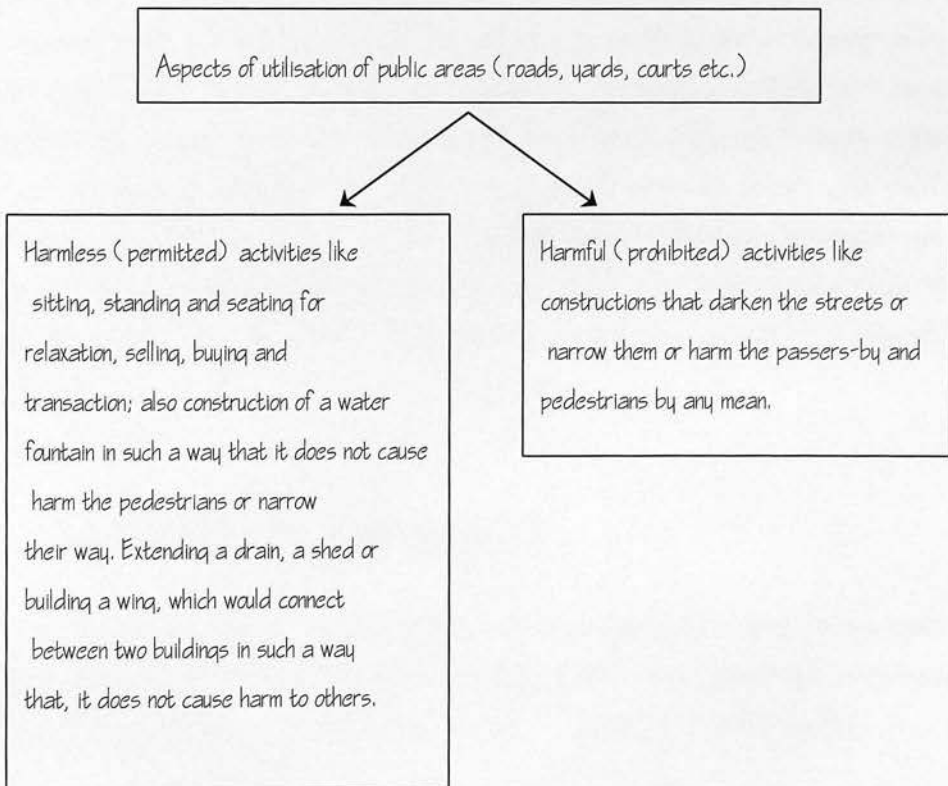


Figure 4.9 Harmful and Harmless Activities (Source: the Author).

4.6.1 Aspects of Enjoyment

There are many aspects of enjoyment of public utilities which have a bearing on the traditional environment. These are outlined in each chapter as they occur. The following is brief introduction to a few examples to be discussed.

4.6.1.1 Allowance of *Al-Irtifaqh* (Easement) with Streets and Yards

Scholars pointed out that '*Irtifaqh*' (easement) of what is between inhabited yards and major streets is allowed for any person. If a person sits in a place, he has a right to it above others and if he leaves it, another can sit there and has also a right to it until he leaves and so on. In the book of *Hilyat Al-Olama*, p.287 illustrated this: "*sitting and standing in streets for taking rest and dealing is legally permissible except on one condition: whenever annoyance is caused by the sitting, e.g. in a narrow street*".

The right of *Al-Irtifaqh* (with streets and yards) ends if the person does the following: "*leaving his profession in it, moving to another place, leaving for good and never coming back...*" (Ibn Qudama, 1970, vol.5, p.536). Ibn Qudama indicated '*Easement is allowed by sitting in large areas [like wide streets, paths and market places] for selling and buying in a way of not vexing others or harming pedestrians as agreed upon by all scholars in all ages that people acknowledge this without any sort of denial. Since easement without damage is allowed, it may not impede others, such as those passing through. If the sitter annoys pedestrians, he is not allowed to remain or sit there and the Imam is not allowed to provide him or others compensation*".

4.6.1.2 Rules of Enjoyment of Public Roads

This does not include sitting, but building and/or extending property such as by an annex, shed, or roof gutter. It is agreed that none of these is allowed if it harms pedestrians as perhaps in the case of a building that makes a street dark or narrow (Al-Souti, 1982, vol.7, p.68).

4.6.1.3 **Imam's Allocation in Streets and Roads**

This allows people to specify certain places in streets for sellers, so that each vendor has a favourable location for selling his wares. Most people of knowledge (*Muftis*) support this permissibility provided it does not inconvenience pedestrians. In his book *Al-Khiraj* Abu Youssof pointed out: *"Nobody is allowed to take action in a Muslim's road in a way that harms them and the Imam is not allowed to allocate some part of a Muslim's road which harms them, since this is not permissible"* (Abu Youssof, 1962, p.93).

4.6.1.4 **Possession Advantages**

When possession is established, the owner is entitled to all types of enjoyment and legal disposition of every type. The origin of realty ownership should include the physical object itself: land, money, gold etc., as well as the property's utility. Possession of realties is for life except in the case of *Ihya'a* as will be discussed in the next chapter. Ibn Al-Shaat indicates that *"possession has no meaning except making use of enjoyment and receiving compensation"* (Ibn Al-Shaat, 1926, vol.3, p.215). Enjoyment of an object for use and disposition is not absolute. The owner is entitled to it however he likes, but he is limited by certain restrictions set by *Shari'a*. This will be covered in the section on Ownership Restrictions.

These advantages and authorities concern only the owner. Nobody else has the right to share or to enjoy an object possessed by another. But *Shari'a* approves, within certain limits, one who is not the owner to make use of the possessed object. This is called ownership of utility (*Manfa'a*) as in renting, hiring, lending and easement (Al-Karabisi, 1873, vol.3, p.233).

4.6.1.5 **Effect and Benefits of Possession Establishment**

Jurists were interested in clarifying capabilities, powers and authorities entitled by the possession for its owner and this has led to the Possession Rule. It is indicated in the book of Sharh Al-Inaya'a (vol.5, p.174) that the *"purpose of life possession is possession of disposition and realty"* (Al-Abbadi, 1974, vol.1, p.142).

4.7 Restrictions of Use and Disposition of Ownership

The author has selected four salient restrictions pertaining to use and disposition of ownership. The first is that the owner should properly enjoy and dispose of his funds. He should not waste, damage or spend them in a useless way. Thus, there is no wasting, squandering or penny-pinching, but moderate use by an optimum means. As for the second restriction the owner should invest funds and thus not let them become inactive. The third restriction states that the owner should abide by rules set by *Shari'a* to regulate all allowed methods for investing and exploiting funds. The fourth restriction states that the owner should not harm others through use and/or disposition of possessions.

4.8 Extracts and Results

- Aspects of ownership appeared in the environment in different shapes affecting its formation. By virtues of *Ihya'a*, ownership becomes complete and land utility in full is validated.
- Incomplete ownership helps the environment to continue, be preserved and then later to develop. It appears in many aspects such as mortmain, charity, gift and renting.
- Terminology resulting from jurists' use affected the environment. This thesis frequently mentions these terms and shows how their embedded meanings and concepts influenced methods of using and preserving the environment.

4.9 Properties Ownership Include Property and Utility

If a person owns certain realty because of a certain stipulated reasons of possession, that person possess its utility as well. When *Shari'a* allows that utility to be possessed alone, this refers to utility as specifically having the basic meaning implied in possession legislation. The realty owner might disclaim utility of some of what realty he owns to others in return for compensation or not.

Accordingly, utility possession does not require realty possession, as the person might possess the utility of the object alone. This is indicated above in types of possession.

Ownership proved on objects for the first time is a complete ownership (i.e. ownership for property and its utility). Thus, land possession cannot be established as incomplete ownership by the established reason (i.e. to be confined to the reality alone or its utility).

Whenever ownership is based upon an established reason like *Ihya'a* or *Iqta'a*, it is conveyed from its owner by one of assigning possession reasons, which means that the owner can assign it as it is (reality and utility) similar to selling and gifting, or can assign the property alone, or its utility alone.

Therefore, complete ownership is by established and/or by assigned reasons. The incomplete ownership cannot be established except by assigning reasons and it should be preceded by full possession (Al-Zorka, 1967, vol.1, pp.253, 254).

Possession of utility is not based on full ownership similar to *Al-Irtifaqh* rights which might be established and settled on a land (not owned by anyone) without possessing it (Al-Khafeef, 1963, vol.1, p.80).

In addition, if a person vitalises a certain land that is surrounded by dead waste land and makes a road to this land or a passage for its water, he thus possesses these rights on the surrounding dead lands without asserting full possession of them. But it is evident that possession of these rights was pursuant to possession of land that has been vitalised. In this case, the utilities belong to the vitalised land. Furthermore, the enjoyment of the vitalised land is *incomplete* except by establishing bordering rights. This will be illustrated when dealing with easement rights (*Irtifaqh*). These rights belong to the land regardless of its owner (see figure 4.10).

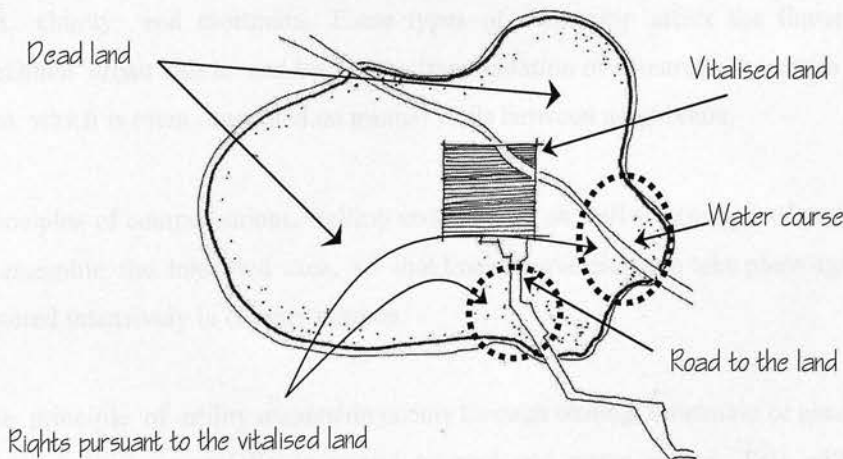


Figure 4.10 Rights belong to the Vitalised Land Regardless of its Owner (Source: the Author).

4.10 Ownership of Properties are Established for Life

When possession of realties is established, it is settled for life unless there is a strong reason for reassigning the possession. It is invalid to possess realty for a fixed time. But utility possession always includes a restriction of timing, so if it is proved by one of its establishment reasons, it is established for a fixed time. Then utility belongs to the realty later (Al-Zorka, 1967, vol.1, pp.254, 257).

As realty ownership is for life, can possession be terminated by being disclaimed by the owner? The majority of the scholars agree that it cannot be thus finished except in some cases, particularly in the jurisprudence of Al-Malikiya, when preference takes place between properties established through verbal agreement. Their possession is not terminated because of allotment, gift, or charity. Ownership of vitalised land is terminated by virtue of its abandonment, at which it becomes dead and barren. This will be covered intensively in the next chapter.

4.11 Conclusion

- Established ownership on the basis of *Ihya'a* or *Iqta'a*, changes the shape of the environment. This happens because of increased building within the inhabited area or planting in the surrounding land.
- This situation is further enhanced by the assigning and retention of ownership, principles of gift, charity and mortmain. These types of ownership affect the linear change of the inhabited urban fabric and lead to the fragmentation of construction texture in the inhabited area, which is often illustrated on mutual walls between neighbours.
- Principles of compensations, 'selling and buying', as well as principle of preemption help to re-assemble the inhabited area, so that linear conversion can take place again. This will be covered intensively in chapter thirteen.
- The principle of utility ownership occurs through renting, mortmain or easement rights for vitalised land, especially in regard to road and water access. This will be dealt with separately in the following chapters.

- Except in cases where ownership is assigned, ownership of real property is granted for the duration of one's life. But in case of *Ihya'a* in forming ownership, scholars have determined the following: *As possession is terminated by the vitaliser's abandonment of his Ihya'a to the extent that it becomes barren and returns to dead land.*

CHAPTER FIVE

Means of Land Ownership

5.0 Introduction

This chapter is the cover of the five chapters that form a contribution to the discussion on the means of land ownership. It depicts the most various principles that are widely applied in the urban context in the German city. Thus, it concentrates on the national (German) and state (Land) laws, but also on local laws. It covers their meaning and method, but also includes some hints to the meaning of a legal and a historical context.

5.1 Definition of Dead Land

There are different definitions for dead land and especially different definitions concerning a

5.1.1 At Handwritten Land

Dead land is the land where no flow of things or activities or buildings or other objects that it is covered by nature. Also it is land that is not covered by a stream, such as grassy land or a place for agriculture that is left to the soil. Also, it is the land for external land or land a distance that can be reached from a city. Also, it is the land for a distance that can be reached from a city. Also, it is the land for a distance that can be reached from a city. Also, it is the land for a distance that can be reached from a city.

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CHAPTER FIVE

Means of Land Ownership

5.0 Introduction

This chapter is the core of the thesis and a significant contribution to the discourse on Islamic architecture as it covers the most unique principles that affect the formation of the urban fabric in the Islamic City. Thus, it concentrates on the principal means of possessing lands in Islam, that is *Ihya'a* and *Iqta'a*. It covers their meaning and definition, their methods and their role in forming the traditional environment.

5.1 Definition of Dead Land

There are different doctrines for defining the dead land and consequently different judgements concerning it.

5.1.1 Al-Hanafiya Doctrine

Dead land is the land wherewith there is no sign of agriculture or building, or other evidence that it is owned by someone. Also it is land that is not utilised by a town, such as grazing land or a place for collecting fuel materials or the like. Also, it is defined as external land at such a distance that no one can be heard calling from it (Abu Youssof, 1979, p.63, Ibn Abdeen, 1966, vol.6, p.431) (see figure 5.1).

This Definition asserts that all lands surrounding the inhabited areas, are considered unavailable for vitalisation because (from the Al-Hanafiya point of view), they are not dead land. Lands sited close to city walls cannot also be considered as dead lands. The other parties of jurisprudence do not agree with Al-Hanafiya jurists.

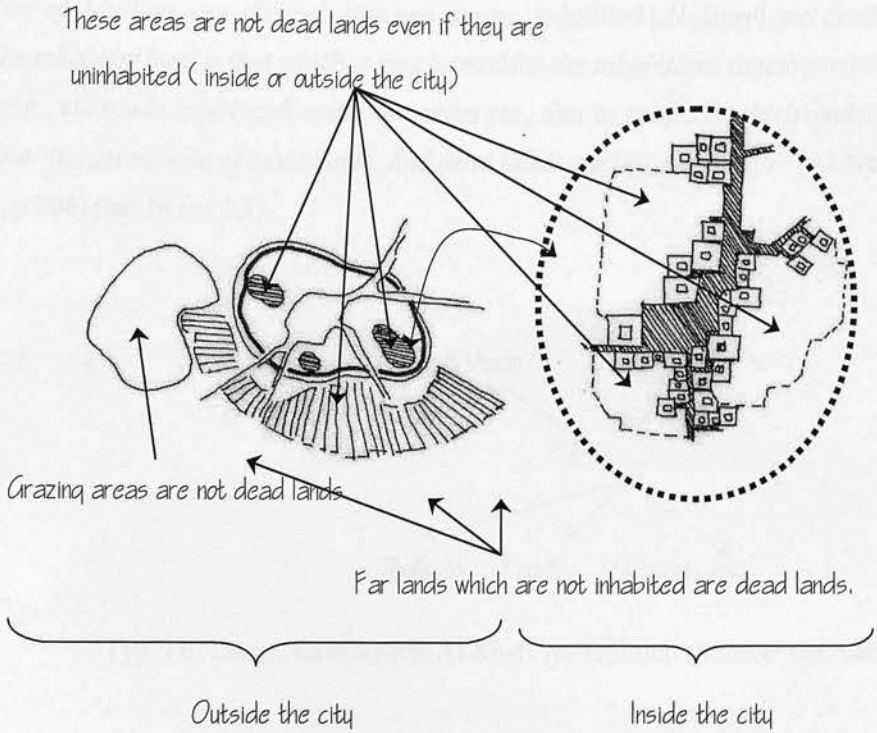


Figure 5.1 Definition of the Dead Land According to Al-Hanafiya Opinion (Source: the Author).

5.1.2 Al-Shafi'iya Doctrine

Dead lands as defined by Al-Mawirdi are: *"all lands which are not inhabited, or a Hareem of, or right-of-way to the inhabited land, even though it is connected to inhabited land"* (Al-Mawirdi, 1960, p.177)(see figure 5.2).

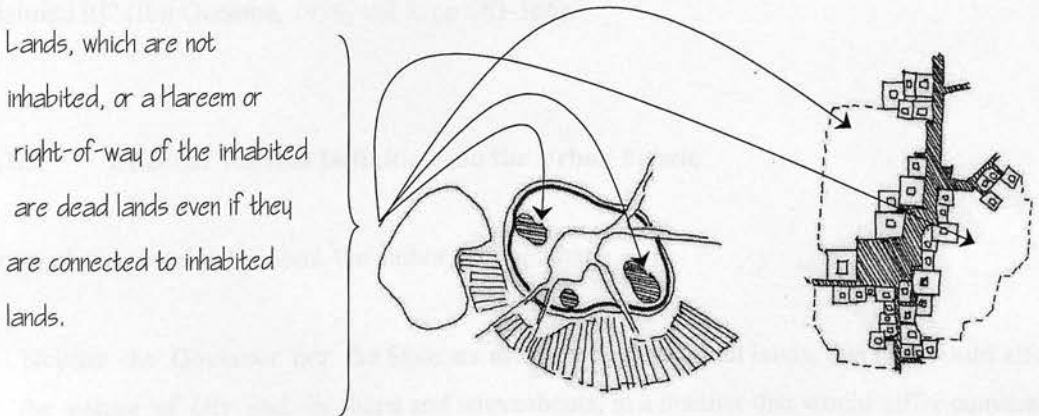


Figure 5.2 The Dead Land as Defined by Al-Shafi'iya Opinion (Source: the Author).

“The countries of Muslims are divided into two groups: inhabited [Al-Amer] and dead lands [Mawaat]. The inhabited land is that which is proclaimed for the inhabitants together with those connected to it via roads, courtyard, water resources etc., that is, property which could not be owned without the permission of inhabitants. And dead lands are left over areas” (Al-Nawawi, 1983, vol.15, p.206) (see figure 5.3).

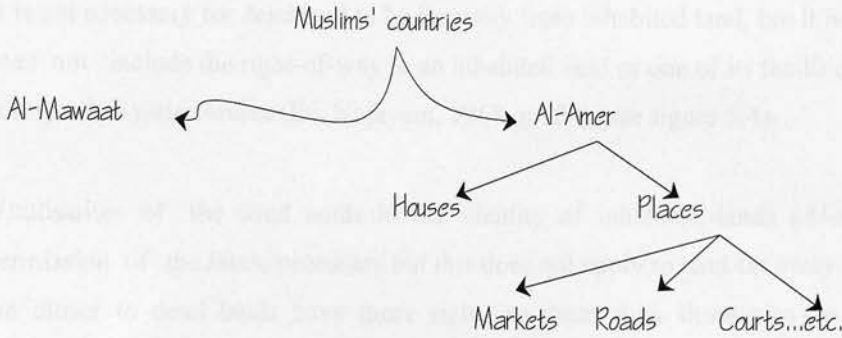


Figure 5.3 Types of Lands According to Al-Shafi’iya Opinion (Source: the Author).

5.1.3 Al-Malikiya Doctrine

“The dead land is the land of no owner and that is not utilised at all” (Al- Abbadi, 1974, vol.1, p.307).

5.1.4 Al-Hanbaliya Doctrine

“Any dead wasteland known that is not owned or vitalised by somebody [i.e. no owner has claimed it]” (Ibn Qudama, 1970, vol.5, pp.563-566).

5.1.5 Effect of Various Definitions on the Urban Fabric

From above stated definitions, the author deduces that:

- Neither the Governor nor the State are the owners of the dead lands, this fact would affect the nature of city and its shape and whereabouts, in a manner that would differ conversely from the present system forming our contemporary environment.

- Inhabited areas - that is, areas of land vitalised by construction - today appear as dense groupings of houses, tightly packed together and forming the 'Islamic City' (see from figure 1.2: figure 1.8). This could not have happened if the 'builders' of these buildings had followed the doctrine of Al-Hanafiya and built at a distance from one another.
- It is not necessary for dead land to be far away from inhabited land, but it is important that it does not include the right-of-way to an inhabited land or one of its facilities, such as a road, courtyard or water source (Ibn Nojayem, 1968, p.188) (see figure 5.4).
- Vitalisation of the dead lands in the vicinity of inhabited lands (*Al-Amer*) made the permission of the *Imam* necessary but this does not apply to land far away. Neighbours who are closer to dead lands have more rights to them than those who are farther away (Al, Mawirdi, 1966, p.177).
- Some scholars (like Al-Shafi'iya jurists) do not consider the permission of the *Imam* to be necessary (Shafi'ie, 1904, vol.7, p.230). If the harm has resulted, so it is as based on the Hadith "*There is no right for those who oppress*" (Abu Youssof, 1979, p.64).

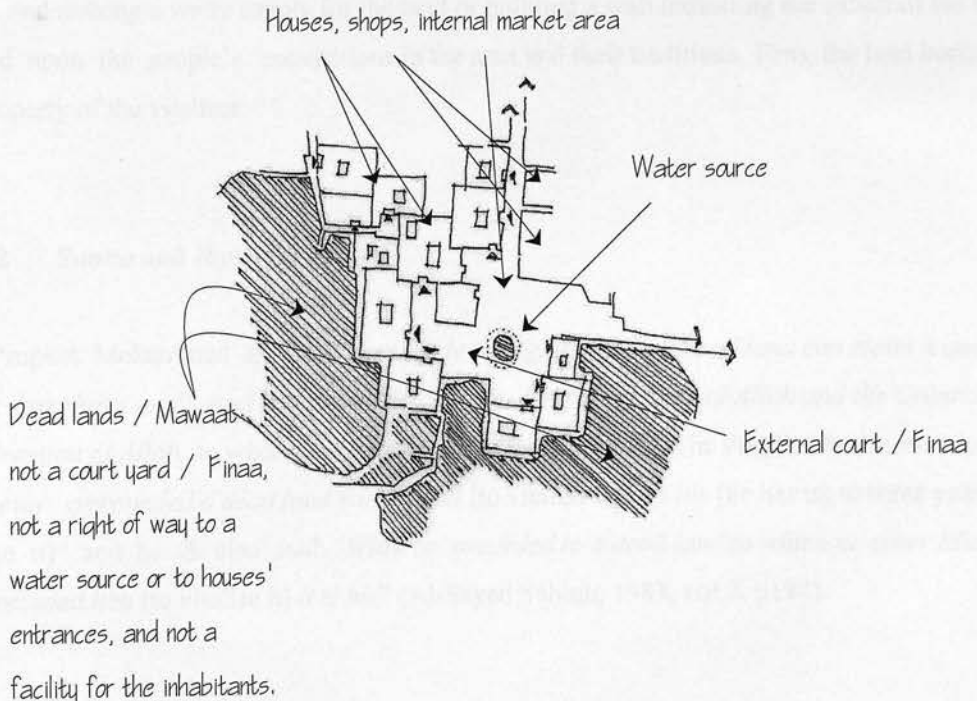


Figure 5.4 Possible Locations of Dead Lands (Source: the Author).

5.2 Means of Ownership of Dead Lands

From the previous text, it is clear that the main authority for possessing improved dead land in new cities by Muslims is *Ihya'a* and *Iqta'a*. In the next few pages the author will cover different aspects related to both of these.

5.2.1 Vitalisation '*Ihya'a*'

This is the most important defining factor regarding the land use pattern of the Traditional Islamic City. The objective of vitalisation is to give life to dead land which is not owned or utilised by any other party.

5.2.1.1 Meaning of Vitalisation

By vitalisation the vitaliser adapts and reclaims dead land either for construction or agriculture and makes it capable for utilisation and benefit to man. Notions of benefit such as digging a canal and making a water supply for the land or building a wall indicating the extent of the land depend upon the people's conventions in the area and their traditions. Thus, the land becomes the property of the vitaliser.

5.2.1.2 *Sunna* and *Ihya'a* Principle

The Prophet Mohammed ﷺ said "*Somebody who gives life to a dead land can claim it and no tyrant has rights to it*". And in another Hadith "*The land is the land of Allah and the Creation is the Creation of Allah, so whoever vitalises a dead land it is his*". The Prophet ﷺ also mentioned "*Whoever surrounded a dead land with a wall [to vitalise it] it is his [he has up to three years to vitalise it]*" and he ﷺ also said: "*Whoever preceded to a dead land to which no other Muslim has preceded him [to vitalise it] it is his*" (Al-Sayed Sabiqh, 1983, vol.2, p194).

5.2.2 Allocated Lands '*Iqta'a*'

The concept of ownership which results from *Iqta'a* describes a distinct set of complementary images which give us, along with *Ihya'a*, a complete idea about cultivated or inhabited lands in the Islamic City. It also tells of further studies of allocated lands and the sequence of decisions that happen in the making of the environment, which affects the formation of cultivated or inhabited *Al-Amer* lands in the Islamic City.

5.2.2.1 Meaning of *Iqta'a*

Granted lands refers to land that the *Imam* (Governor) grants to a citizen for constructing his building. He grants it on the condition that it should not be used by anyone else. It is either dead land or land that is under the ownership of the Finance House of the State (*Baytull Mall*). The *Imam* can grant land for ownership, for utilisation, or for easement. These three categories relate respectively to neglected or dead land (*Mawaat*), cultivated or inhabited land (*Al-Amer*) or land rich in minerals and metals (Abu Yala, 1966, pp.227-240) (see figure 5.5).

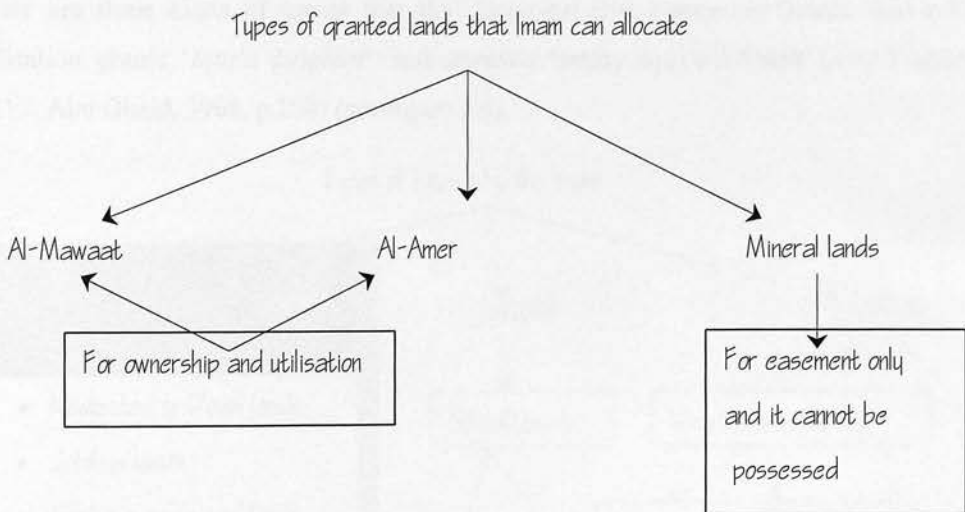


Figure 5.5 Granted Lands by the *Imam*, Types and Divisions (Source: the Author).

5.2.2.2 Types of Lands Generating Revenue for the State Finance House '*Baytull Mall*'

There are three kinds of these lands. They are *Sawafi*, *Attiya* and *Ghana'em*.

- *Sawafi*: This is the land revenue generated by invading other countries or from the belongings of a man who escaped or was killed in war. These revenues are taken and stored in the Islamic Finance.

- Gifts and Presents '*Haddiya, Attiya*': These revenues come from properties of people who have become unable to maintain their lands, for example the lands given to Prophet Mohammed ﷺ by Ansar (the original inhabitants of Madinah) when they could not reclaim it (Abu Youssof, 1979, pp.62-67). Al-Mozani provides evidence here that the Prophet ﷺ granted a land in Madinah between the inhabited land of Ansar and the Palm Trees as being cultivated land (Al-Mozani, 1976, p.130, Ahmed, 1960, vol.3, pp.111-201).
- Spoils '*Ghana'em*': These have been gained from an enemy during war. Spoils are supposed to be distributed between warriors unless they are given to the *Imam* (Governor) voluntarily, as with the land of Sawad in Iraq. The *Imam* has the right to allocate these lands to needy people.

5.2.2.3 Lands Granted by the *Imam*

There are three kinds of grants that the *Imam* can give: ownership Grants '*Iqta'a Tamleek*'; utilisation grants '*Iqta'a Istighlal*' and easement Grants '*Iqta'a Irtifaqh*' (Abu Youssof, 1962, p.217, Abu Obaid, 1968, p.288) (see figure 5.6).

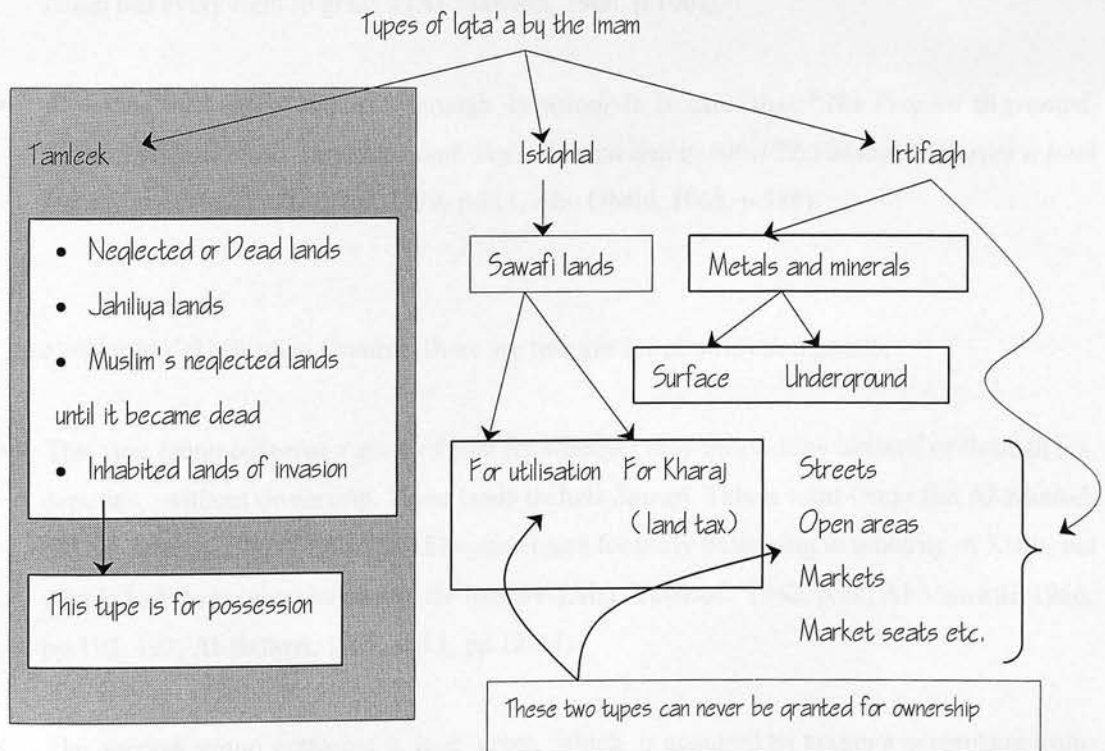


Figure 5.6

Types of Ownership Lands that the *Imam* can Give (Source: the Author).

Iqta'a Tamleek (Ownership Grants): There are four situations relating to these lands (see figure 5.6).

- One situation occurs when land is neglected or dead. In this case the *Imam* has the authority to grant the land to whoever may vitalise it to become a property. “*The Prophet ﷺ granted a land to Al-Zubair Ibn Al-Aw'am as much as the area for running of his horse and though he [Al-Zubair] pushed his whip for an increment, the Prophet ﷺ agreed*” (Abu Youssof, 1962, p.62).
- Another situation involves any land that gives evidence of *Jahiliya* (that it belonged to people before Islam) for agriculture or construction and was defined as ‘inhabited’, but subsequently became neglected or dead. In such case the *Imam* has a right to grant it to someone. The Prophet ﷺ said “*These lands are for Allah and His Messenger and it is from me to you*” (Al-Abbadi, 1974, vol.1, p245).
- This situation concerns land that shows signs of Muslim agriculture or building, but later becomes neglected or dead. If its previous owner is known, it goes to his heirs and cannot be granted. But if the heirs are unknown, it is turned over to the Islamic Finance House and the *Imam* has every right to grant it (Al-Mawirdi, 1966, p.190).
- The inhabited lands acquired through invasion. It is said that: “*The Prophet ﷺ granted Tamim-Al-Dari both Hayroom and Bayt Aynoon and granted Tha'alaba Al-Husani a land from Romans*” (Abu Youssof, 1979, p.217, Abu Obaid, 1968, p.388).

Iqta'a Istighlal (Utilisation Grants): There are two groups of utilisation grants:

- The first group concerns a grant of land for whoever may utilise it by himself or through his deputies, without ownership. These lands include *Sawafi*. This is what Omar Ibn Al-Khattab did in selecting land from the Finance House formerly belonging to a family of Kisra, but which had been abandoned by its owners (Abu Youssof, 1962, p.57, Al-Mawirdi, 1966, pp.192, 193, Al-Balazri, 1957, vol.1, pp.12-14).
- The second group concerns a land grant, which is acquired by taking a percentage from whatever is produced from the land on condition that the rest of *Kharaj* (land tax) is for those who are working the land.

Iqta'a Irtifaqh (Easement Grants): Easement grants fall under two categories:

- The first are grants of metals under the ground, which could be accessed by excavation. This, the *Imam* can grant as an attachment (*Irtifaqh*) but not as ownership (lands having surface minerals cannot be granted by the *Imam*). Rivers, grass, fire, salt, oil and stones for buildings cannot be owned by any individual or authority.
- Grants of street, roads, open areas of outdoor markets and market seats. These are not owned by anybody. It is allowable for the *Imam* to grant them to any person connected to the particular place who might be sitting, selling or buying. This is contingent on condition that such uses do not harm anybody.

5.2.2.4 Results

- Based on above details, the lands to be granted by *Imam* are of three kinds: neglected or dead land; inhabited or cultivated land (selected lands (*Sawafi*), Gifts and spoils of war) and lands with metals and minerals (surface and underground deposits).
- At the time Islam was established it was not allowed for the *Imam* to grant any surface metal deposits. He could issue grants for underground metals but only as an easement, not ownership. Before proceeding to the means and requirements of vitalisation which lead to the ownership of dead lands, a very important question has to be answered: since vitalisation does not require permission of the *Imam* for the granted land: can it be dead land as granted by the *Imam*? Why should the people wait for the permission of the *Imam* to make vitalisation possible? The answer is that the act of granting is centred in the establishment of new cities as happened, for instance, in Baghdad (see chapter 3). Al-Balazri mentions the grants in opening the cities and countries in more than 50 places (Al-Balazri, 1957, p.295).
- Vitalisation and granted lands are the two basic means for stimulating private ownership of land (which is now a problem in Islamic societies)
- Jurisdiction under *Shari'a* is an effective means to encourage people to work and invest in their own lands and buildings. This is a means for combating poverty, as incentives for vitalisation lead to complete ownership.

- Granting inhabited land which has become dead is allowable if it was inhabited by non-Muslims before it fell to ruin. Though scholars are unanimous in their views about vitalisation, they have differences of opinion about granting land previously occupied by Muslims.
- Al-Malikiya's view is that land can be reassigned by vitalisation whether its owners were known or not because such land becomes common property due to its neglect.
- Al-Shafi'iyah argues that such land should not be owned through vitalisation whether their owners were known or not. The third position taken by Al-Hanafiya is as follows: if the previous owners are known, the land should not be repossessed by vitalisation, but if they are not known, it is all right to do so.

5.3 Means of *Ihya'a* and *Iqta'a* that Lead to Ownership

A man came to Ali Ibn Abi Talib عليه السلام and said, *"I vitalised dead land whose owners failed to plant it, dug for it a canal of water and cultivated it. Ali عليه السلام said: 'take it and enjoy it with good cheer. You are a reformer, not a spoiler, a vitaliser and not a destroyer' "* (Yahya Ibn Adam, 1964, p.63).

Also Abu Zuraik Ibn Hakeem said: *"I read the letter of Omar Ibn Abdul Aziz عليه السلام commanding one of his workers that: 'Whoever vitalised a dead land by building or ploughing, thereby makes it legal ownership for him' "* (Ibn Salam, 1968, p.369).

Also, Ibn Qudama narrated that: *"Urwa عليه السلام said: Omar bin Khattab عليه السلام did that in his regime and the majority of scholars agreed that ownership should go to the Vitaliser though they did differ on its conditions' "* (Ibn Qudama, 1970, vol.5, p.563).

The scholars defined four means / conditions of vitalisation and grants in the dead lands. These were: 1) by stone setting (*Tahjeer*); 2) by subsequent negligence of inhabited or cultivated areas; 3) by vitalisation of other's lands without their knowledge and 4) with the permission of the Imam.

Al-Mawirdi (doctrine of Al-Shafi'iyah) says: *"The case for vitalisation is based on the convention of vitalisable land because whatever was absolutely mentioned by the Prophet ﷺ*

has been transformed into convention. If he wanted to vitalise the dead land for dwelling, its vitalisation should be by building and roofing for complete habitation as for a dwelling” (Al-Mawirdi, 1960, pp.177-178).

Abu Yala, who ascribes to the opinion of Hanbaliya says: “in the case of vitalisation by dwelling, its possession will only require erecting a wall, not necessarily roofing the buildings” (Abu Yala, 1969, pp.209-210).

For vitalisation, two conditions have to be met. Either a wall has to be erected or the water of the land controlled, by running a supply into it if it were dry or preventing excess water coming into it if it were flooded or swampy (Ibn Manzoor, vil.1, p.225). According to Mohammed Abu Zahra; “vitalisation is cultivation of land, erecting its walls around it, dividing it into houses, shops and the like” (Abu Zahra, 1964, p.45). Al-Mawirdi says that “it is not necessary for the vitalised lands for ownership to be inhabited or cultivated, but it is enough to prepare it for that purpose” (Al-Mawirdi, vol.5, p.591).

He adds that “if a person wanted land to be vitalised for agriculture he should use all accumulated dust to shape up a barrier between it and other lands; run water into it if it were bataih (dry land) or otherwise draining it if it were swamp in order to enable cultivating on it in both cases and then ploughing the land, [‘ploughing’ here is taken to mean turning out the sand (land) and levelling the surface by transferring material from the higher points into the lower troughs]. If this is completed, vitalisation is accomplished as is ownership” (Al-Mawirdi, 1960, pp.177-178).

Al-Shafi’ie mentioned some examples on the means of vitalisation and all of them influence conventional understanding, which is the major factor which determines the requirements of vitalisation (Al-Shafi’ie, 1904, vol.4 p.41).

5.3.1 *Al-Tahjeer (Stone Setting)*

This implies fixing signs on the dead or granted land with a view to its vitalisation. This is done by putting any kind of signs or marks like stones, bricks, wood, walls, dust etc. around it to show its limits.

As for the description of the fence of a vitalisable land, Ibn-Qudama says that *“The wall [fence] should be very strong holding back what lies behind it and built as usual and as differs according to the conventions of the inhabitants of the place. It may be made by stones or bricks only among Horan and Palestine people, or by mud such as the people of Al-Ghutah and Damascus or by wood and canes as the people of Al-Thughour [the boarders] territories* (Ibn Qudama, 1970, vol.6, p231).

“Vitalisation, by which the land is owned through cultivating for utilisation and benefits, also depends upon local conventions because the Prophet ﷺ left the vitalisation process open and did not constrain it, it is therefore left to the convention” (Al-Nawawi, 1983, p.123).

5.3.1.1 Conditions of *Al-Tahjeer*

Any team or individual who puts signs around a dead land has no right to it after a lapse of three years. If by then, it is not vitalised, any one can have an equal right to it, i.e. others can come after three years and vitalise the land that has been marked. The marked land is not considered a property and cannot be sold prior to its vitalisation. The land granted should be returned from whoever could not vitalise it within three years.

The land markers indicate the person to be the most rightful person upon that land and no one else may disturb him, nor may the *Imam* grant the land he marks to any other (Al-Kasani, 1907, vol.6, p.194), but does not give him ownership to it *“Whoever started a work of vitalisation as making the foundation of a building or marking a position of it by stones, prevents the use of it by any one else. Therefore he is the rightful occupant of the land even though he is not the owner. Prophet Mohammed ﷺ said: ‘whoever was the foremost one to get something before any body else is the most rightful for it’ ”* (Al-Nawawi, 1983, vol.15, p.219, Al-Abbadi, 1974, vol.1, pp.161, 162).

Concerning the period of *Tahjeer*: Prophet Mohammed ﷺ said that *“the land is for Allah and his Messenger; then it is for you afterwards. Whoever vitalised a land, it is for him and it not for a land marker if three years have lapsed”* (Abu Youssof, 1979, pp.65, 101, 102). Scholars raised to the judgement of *Imam*’s view and convention: *“If the period of stone-marking was prolonged without reason, the Governor could instruct to [the putative owner] either to vitalise it or leave it for some other to vitalise”* (Al-Abbadi, 1974, vol.1, p.385) because he neither

vitalised it or left it to someone else to vitalise. But if asked for another chance he might be given a further month or two and so forth (Ibn Qudama, 1970, vol.5, pp.569, 570,211).

5.3.1.2 Selling Land before Vitalisation

It is not allowable for such a land to be sold if there has been no vitalisation “*If the stone-marker wanted to sell it prior to vitalisation, it is not lawful*” (Al-Mawirdi, 1960, p.178).

5.3.1.3 Right of *Al-Ikhtisas* (Competence)

The right of *Ikhtisas* can be achieved by *Ihya'a*, *Tahjeer* or *Iqta'a*. “*It is well known that the land marker does not own the land by putting marks*” (Ibn Rajab, 1933, p.190), so it is important to distinguish between the right of *Ikhtisas* and others rights. On the subject of ownership the right of *Ikhtisas* gives its owner the capability to use the property, but not to possess it. He also has no right to sell it.

5.3.2 Negligence and Repeal of Neglected Cultivated or Inhabited Land *Al-Amer*

Ownership of lands cannot be nullified in any jurisdiction because it is not limited by time, unless transferred by other means such as selling. If the land was owned by vitalisation and then neglected, it reverts to being common property because the vitality of the land, not the land itself, is proof of ownership. The ownership is not dependent upon a certain period of time, if it has been received by purchase, donation or grant.

5.3.3 Vitalisation of Another's Land Without his Knowledge of it

This covers the vitalisation of somebody's property on the understanding that it was dead or with the intention of harming him. The Prophet ﷺ said, “*Whoever cultivated a dead land which was not owned by anybody before him, it is his very own and there is no right for oppressive piece of wood or timber*” (Yahya Ibn Adam, 1964, pp.86, 87). According to Yahya Ibn Urwa, he said: “*two men from Ansar were disputing about a piece of land owned by one of them which the other had cultivated by planting palm trees. The Prophet ﷺ judged that: 'the owner should take his land and the vitaliser to take his palms and said that Whoever cultivated somebody's*

land without his knowledge, he is entitled to take his wage, but nothing is due for him from the plants” (Abu Obaid, 1968, p.394).

Under the caliphate of Omar Ibn Al-Khattab ؓ there was a man who cultivated a land that was dead. Then someone proved that the land was his. The dispute was referred to Omar, who said to the owner of the land: *“if you want, we may evaluate what work he has done and what you owe to him. And if you want him to pay for your land, he will”* (Abu Obaid, 1968, p.366). And on page 367 he stated: *“Omar Ibn Abdul Aziz ؓ [the caliph] was the judge for a man who vitalised land by way of cultivation without the knowledge of its owners. He advised the owner either to pay to the vitaliser for his work or, if he could not, that the vitaliser would pay him the price of his land”* (for more cases review Abu Obaid, 1968, pp.334-344).

Based on this, the author can state that anybody who has cultivated a land thinking it was dead and then found out that it was owned by someone may either demand his wage or see to the transfer of the ownership to the vitaliser and pay its price (Al-Sayed Sabiqh, 1983, vol.2, p.196).

If, however, cultivation is done with the deliberate intention of harming the marked land (the action of prior vitalisation), then the vitaliser would have no right to be compensated for his costs or efforts.

As the owner has to accept the price of land given to him by the vitaliser, the people are careful to work on their land and not to neglect it. The vitaliser has more right to own the land than the land marker who neglected it.

Any effort exerted on a land will not go in vain unless the vitaliser is mean spirited. If a person vitalises someone else's land with their full knowledge, they can expect to be paid the value of his vitalisation. If the land has been vitalised without the owner's knowledge, nothing is owed to the oppressive vitaliser.

If the owner refuses payment to the vitaliser then *“the land could become the basis of a partnership, between the owner of the land and the vitaliser with his cultivation. In this case the vitaliser would not be obliged to pay the price of the land to the landlord”* (Ibn Al-Rami, 1982, p.440).

Ibn Habib interpreted this partnership in saying, *“the land should be first evaluated as open land without vitalisation, then again after vitalisation. The increment caused by vitalisation is the*

basis for the percentage of partnership of the vitaliser and the value of the land governs the percentage of the owner's partnership. Accordingly, they may divide it or continue as partners" (Ibn Al-Rami, 1982, p.441).

"Whoever intruded on land belonging to other people and built a building on it without their permission, has no right to it. If he had permission, he would get the benefit of the building" (Yahya Ibn Adam, 1964, 99).

5.3.4 Permission of the *Imam*

The majority of scholars (except for Al-Hanafiya school) agreed that it is not necessary for those who vitalise land to secure permission from the *Imam*. On the contrary, they only have to admit ownership of the property to those who then vitalised the same land without permission.

The reason why Al-Hanafiya made the permission of *Imam* necessary was to avoid any quarrel or animosity among the people. For, if two people wanted to vitalise a piece of dead land, who has right to it? Furthermore, if someone wanted to vitalise dead land in the courtyard of somebody else, could the latter claim jeopardy?

The Prophet's ﷺ Hadith: *"Not for any unless it was satisfactory to his Imam"* (Al-Mawirdi, 1960, p.176). Yet, did the Prophet ﷺ determine these things under the role of being the *Imam* or, less inflexibly, as the outliner and explainer of jurisdiction? Those who said that the Prophet ﷺ referred literally to the person of the *Imam* make the permission of *Imam* necessary and those who considered it as analogous to juridical clarity see no the need to invoke the *Imam*.

5.4 Cancellation of the Land Ownership

Whoever owns a property by whatever reason, his ownership can never be deleted by negligence. A house or land that has become ruined over the years is still under the ownership of the first owner and is not considered to be dead (Al-Abbadi, 1974, vol.1, pp.377-378).

Ibn Qudama said: *"Whatever was owned by purchase or grant can never owned by vitalisation without doubt"* (Ibn Qudama, 1970, vol.5, pp.563-564). And Ibn Abdul-Barr said, *"The consensus of scholars is that whatever is known to be owned by someone, can not be vitalised by anyone but its owners"* (Ibn Abdul Barr, 1976, vol.4, p.19).

Vitalisation is an actual reason by which available land can be owned. Reasons of lawful ownership (*Ihya'a*) are weaker because they apply to land without a previous ownership, other than the verbal ownership (*Iqta'a*, gifts, presents, *Waqf* etc.) by which the ownership may not be cancelled. The ownership of specific land is not limited over time, but the ownership of something vitalised is entirely dependent on the time the vitalising occurred. The Prophet ﷺ said: “*Whenever land is given as a gift to somebody, it is for him and his heirs*” (Al-Zorka, 1967, vol.1, pp.272, 273).

Any land owned by vitalisation, if neglected to the point it fell to ruin, could become a grant (i.e. by the *Imam*), because the vitalisation process is the proof of utility ownership but not a proof of timed ownership” (Al-Abbadi, 1974, vol.1, pp.377, 378).

“*Granted land ownership is not nullified by removal of vitalisation, because vitalisation was not the reason of ownership, but Granting which is one of the rules which can not be criticised*” (Ibn Qudama, vol.5, p.564). Anything owned through a sale (or verbal agreement) has more legal weight than the actual effort made in the work of vitalisation. That means ownership can be nullified by removal of vitalisation (Al-Karabisi, 1873, vol.4, pp.18, 41).

5.5 Conclusion

From the above mentioned cases and examples it can be stated that Islamic Jurisdiction encourages all individuals to work and own their lands without hampering their progress, because *Shari'a* seeks to remove any obstacles against those who do so. Consequently, the land has no purchase value and belongs only to those who vitalise and work on it (and dead land is owned by *Ihya'a*). The state or other party has no right to control or sell such land. This fact, in spite of its simplicity, has substantial implications for the built environment:

- The ownership of land is gained by putting “effort” to make wasteland productive. It also encourages all individuals in the society to become productive. It holds that any one can possess a land by the principle of *Ihya'a* without the permission of the *Imam* and thus provides every needy person the chance to cultivate land that is needed to make a livelihood.
- The *Ihya'a* of dead land not only results in ownership but also gains the satisfaction of Allah (God) according to the Hadith of the Prophet ﷺ in which He said “*land is the land of Allah and the people are his people so whomever vitalise a dead land it should become his*”.

- The vitalisers know that if they neglect their lands it will no longer be theirs. This encourages them to continue in their cultivation and care for the environment. This also raises the percentage of owners of the environment (because vitalisation makes ownership possible).
- Due to vitalisation the external boundaries of buildings plots (based on diverse rules such as *Tahjeer*) become clear. Principles of refinement of these boundaries has emerged through other different generated rights like *Hareem*, *Irtifaqh* and *Darar*. In other words, every vitalised and inhabited land is connected to the right of *Hareem* and the right if *Irtifaqh* is secured by the general right of *Darar*.
- The concept of utilisation and its benefits brings to those who vitalised it the right of ownership and thus, all dead lands become cultivated.
- An incentive therefore exists to exhort individuals and their sons after them to work and vitalise their family land. This would not happen if it was not theirs.
- Upon satisfying the act of vitalisation, the person benefits in two ways: psychologically, there comes a feeling of dignity and pride and economically, a person acquires constructive experience and the property is kept in constant productivity.
- The principle of vitalisation allows individuals, especially needy people, to cultivate dead lands, which in turn, solves a plethora of economic, social and political problems such as joblessness, non-productivity and ill health.

PART THREE

Section One

Principles of the Traditional Islamic Cities

CHAPTER SIX

No Darar No Dirar

1.2 Introduction

Both *Shari'ah* and *Fiqh* are intertwined and growing in pace for the ownership to deal with. From this infer the absolute freedom of the owner to do as he pleases or he likes with his independent interest. If he were then, as what nature is, how the owner? What is the criterion for such a measure of ownership? And, finally, what is the nature of ownership? It will cover some questions by nature of these questions, the writer simplifies the process of the subject.

From previous chapters it is clear that *Shari'ah* and *Fiqh* are growing in pace with the growth of the world and buildings, which consequently can be divided into three parts and each part has its own and place that is related by natural boundaries, often by separating walls. Knowledge of the aspect of ownership is necessary to know where the principles of ownership are. The behavioral aspect of the owner is right to do what he wants, such as making additional structure or boundaries. It is fully permitted for the members of house of the owner to maintain freedom, independence and freedom of his house. It is also permitted for the owner to make any change or

As for individual house

- Wind windows can look into another building and through its privacy.
- The making of a larger doorway that is higher or in front of a neighbor.
- Closing a door with a wall or a neighbor's wall that is not necessary.
- A wall can be formed by a wall or a wall or a wall by changing the end of the building.

In regards to coming here in a society

- Making a wall in the middle of a street with a door to separating between two houses in the upper level above the street. Another solution is by making a door that is not necessary to give out property into public property in a way that could harm people.

CHAPTER SIX

*No Darar No Dirar***6.0 Introduction**

Both *Ihya'a* and *Iqta'a* (vitalisation and granting) provide for the ownership to dead land. Does this infer the absolute freedom of the owner to do whatsoever he likes even if he jeopardises others? If he were free, to what extent is this the case? What is the criterion for such a constraint of ownership? Are there any rules to constrain ownership? To illustrate some answers to some of these questions, the author would like to provide the following:

From previous chapters it is clear that vitalisation and land granting endow absolute ownership of land and buildings, which subsequently can be divided into places and real estate. Real estate and places are delimited by external boundaries, often by separating walls. Knowledge of the extent of these limitations is necessary in cases where the principles of need and absolute behaviour endow the owner the right to do what he wants, such as making additional storeys on his building. It is only natural that the free conduct of usage of the properties sometimes leads to jeopardising neighbours either individually or collectively, depending on particular cases.

As for individual level:

- Window openings can look into another building and threaten its privacy.
- The building of a higher floor may block sunlight or air from a neighbour.
- Digging a new well close to a neighbour's well may drain its water.
- Neighbours could be harmed by a bad smell or sound or deeds by changing the use of the building.

In regards to causing harm to a society:

- Using public facilities such as streets with a *Sabaat* (a connecting bridge room between two houses at the upper level above the street), *Roshan* (window) or making a drain that protrudes from private property onto public property in a way that could harm passers-by.

The principle of *Al-Ta'assuf* (Aggressive Conduct) in exercising rights is frequently used to decide in these cases and to provide detail in applying its rules under the principle of Hadith *No Darar and no Dirar* which is the essence of Islamic jurisdiction, that was well known before it became law centuries ago (Al-Dereni, 1977, p.12). This principle and law were the means used to change and control the environment and subsequently transformed it over time. The Principle has formalised the environment regarding relationships between close and distant neighbours and controlled the relationship between society and utility as well.

Reviewing the environmental benefits of this principle will clarify the concept of the Islamic City, which cannot be fully grasped without understanding this principle and its application in the traditional environment. By this principle, Muslims have come to recognise their urban environmental problems and the urgent need to solve them.

This chapter depicts the main processes that are followed by people who live together in peace within the traditional environments they have developed. At the end of this chapter the author verifies how far this principle is shared in formalising this environment and decision-making. The right of behaviour without permission from authorities led to the emergence of harm, compelled the owner to deal with the issue of harm and prevented him from behaving purely at his own whim. This rendered a great service to the environment and widened the range of environmental experience to favour of the whole nation. This developed, in the course of time, the national conventions that are brought to us, now with their typical architectural phenomena.

6.1 Harm (*Darar*) and Constraints of Rights

This section of the chapter outlines the inhabitant's rights in changing the function of his building in the traditional environment.

6.1.1 General Account of Scholars' Views

6.1.1.1 Al-Shafi'iya and Al-Hanafiya Opinion

Dwellers have every right to change their building functions in the traditional environment. Al-Hanafiya and Al-Shafi'iya (as well as a narration of Ahmed) suggest that the dweller cannot be

prohibited from doing so whether jeopardising neighbour or not, because he is free to build whatever he wants on his property.

Al-Kasani said that the owner has every right to behave however he wishes regarding his property, whether this would cause harm to somebody or not. He may build a toilet or a bathroom or a mill or a quern and he has the right to keep a blacksmith or a bleacher as well. He may also dig a well or a manhole or a waste canal even if his neighbour is jeopardised. Yet his neighbour has no right to prevent him or ask him to make changes in his facilities. If he did, the doer, who had absolute control over his property, is not obliged to follow his neighbour's request unless he was infringing on that other person's rights. But avoidance of his neighbour's harm is a religious matter due to the Hadith narrated by Abu-Hurairah in which the Prophet ﷺ said: “*By Allah his faith is incomplete. By Allah he is not a perfect Muslim. By Allah he does not believe*”. He was asked: ‘*O Messenger of Allah! Who is he?*’ He said ‘*One whose neighbour is afraid of his mischief or does not feel comfortable with him*’ ” (Al-Dereni, 1977, pp.128, 129, Al-Kasani, 1986, vol. 6, p.246, Ibn Qudama, 1970, vol.4, p.572).

6.1.1.2 Al-Malikiya and Al-Hanbaliya Opinion

Al-Malikiya and Al-Hanbaliya considered *Darar* (harm) to be one of the original constraints upon the right of behaviour and prohibit *Al-Ta'assuf* if used in such a way that it may cause harm to others. They use the law of *Darar* and the Hadith *No Darar no Dirar* as the controlling principle regarding the owner's freedom. Consequent rules differed regarding the specifics of harm based on its kind and intensity. Harm was seen to be either upon people or upon the building or upon both.

Harm upon people: this type of harm can be divided into three types: *visual harm*, in which it is considered harmful to have openings which uncover the modesty of the neighbour including places of eating, sleeping and resting; *auditory harm*, that is by converting a room into another function which could produce noise harming the neighbours. Opening up a carpentry shop could be an example of this. *Olfactory harm*, is caused by the bad smells emitted by a land use such as tannery.

Harm to building: this is of two types: direct harm against the building such as hammering on a wall, or destroying it by fire; and indirect harm such as causing vibrations to the wall by operating machinery (see Figure 6.1).

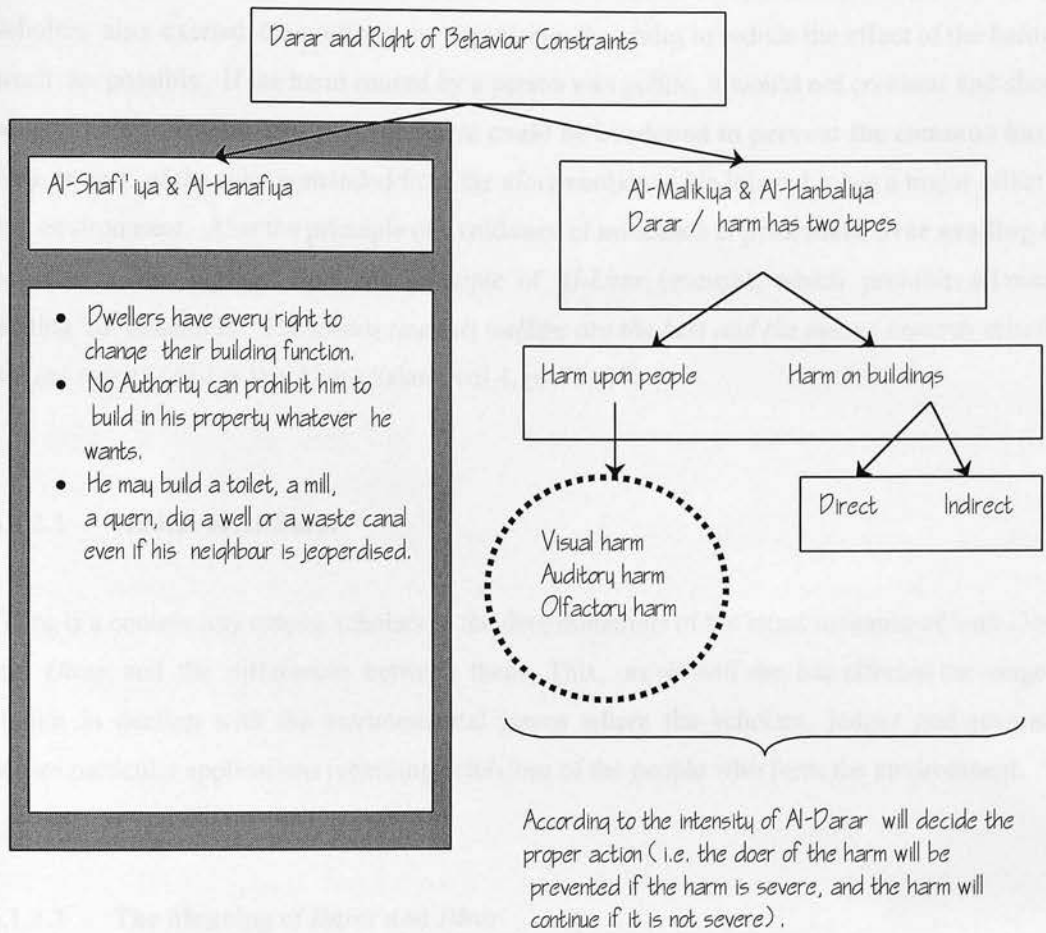


Figure 6.1 *Darar* in the Traditional Environment and the Right of Behaviour Constraints (Source: the Author). Sever

6.1.2 *No Darar and no Dirar*

This is a Hadith of the Prophet ﷺ which clarifies that all kinds of harm are prohibited by the law of Islamic jurisdiction. Abu Dawood said: “The Doctrine (*Fiqh*) is rotating on [based upon] 5 Hadith” and pointed out to one of them which is *No Darar and no Dirar* (Yahya Ibn Adam, 1964, p.97, also Malik, 1981, p.549, Ahmed, 1988, p.98, Al-Qazweeni, 1953, vol.2, p.210, Al-Shawkani, 1981, vol.5, pp.259, 260, Al-Borno, 1984, p.77).

Verses of the Quran and Hadith of Prophet Mohammed ﷺ outline a great variety of prohibitions of harm. Many rules that have been derived from them are encompassed by this great principle. Scholars also exerted their efforts in organising the rules to reduce the effect of the harm as much as possible. If the harm caused by a person was public, it would not continue and should be prohibited because **the private harm could be burdened to prevent the common harm**. This is one of the rules concluded from the aforementioned Hadith and it has a major effect on the environment. Also the principle of **avoidance of mischiefs is prioritised over availing the benefits** is also derived from the principle of *Al-Uzer* (excuse), which prohibits all means leading to mischiefs. “*The means towards welfare are the best and the means towards mischief are the worst*” (Al-Izz Ibn Abdul Salam, vol.4, pp.53, 54).

6.1.2.1 Hadith of *Al-Darar*

There is a controversy among scholars in the determinations of the exact meaning of both *Darar* and *Dirar* and the differences between them. This, as we will see, has affected the usage of Hadith in dealing with the environmental issues where the scholars, judges and governors debate particular applications regarding behaviour of the people who form the environment.

6.1.2.2 The Meaning of *Darar* and *Dirar*

Islamic scholars provide a range of literal meaning as follows. Both *Darar* and *Dirar* have the same meaning and one is mentioned to confirm the other. There is a difference, however, which is sometimes recognised as follows:

- *Darar* is the noun and *Dirar* is its verb. This means that, as harm is forbidden, doing this harm is judicially prohibited.
- *Darar* is jeopardising somebody against a benefit of the doer, while *Dirar* is merely causing loss or injury against no benefits (Ibn Rajab, 1962, p. 267).
- *Darar* is initiating harm against somebody whereas *Dirar* is avenging harm by equal harm in unacceptable ways (Al-Zorqani, vol.4, p.32).
- *Darar* refers to the injury of one of your neighbours and *Dirar* implies that each one harms the other. That is why the Prophet ﷺ prohibits someone from intentionally harming someone else, for otherwise both would intentionally harm each other (Al-Dereni, 1976, pp.345-351).

- *Dirar* is to harm yourself and consequently harm others (Al-Abbadi, 1974, pp.138, 139).
- *Darar* is what one person does. *Dirar* involves two or more persons (Malik, 1998, vol., p.32).
- *Darar* means that some one causes harm to his neighbour while *Dirar* means both harm each other (Ibn Al-Rami, 1982, p.299).
- *Darar* is to harm yourself and consequently jeopardise others through your harm (Al-Dereni, 1967, pp.119-124).
- *Darar* is also described as causing a loss to others, while *Dirar* is a matter of vengeance due to a previous injury and which widens the range of harm (Al-Borno, 1984, pp.80, 81).
- In *Lisan Al-Arab*: The meaning of no *Darar* is '*Do not harm your brother*', while no *Dirar* means '*Do not harm each other*'. *Darar* refers to starting an action while *Dirar* centres on retaliation (Ibn Manzoor, 1956, p.213).
- *Darar* means that the man should not jeopardise his brother neither intentionally nor in retaliation because the harm is from one party and the jeopardy is mutual. And the harm in retaliation is exceeding the limits of jeopardy beyond what it should be and it is unequal to the initial grievance (Ibn Abdeen, 1979, vol.6, p.593).

From the previous definitions the author concludes that ***Darar* is harm to one's neighbour in the pursuit of some benefit of the doer** such as building a toilet in the vicinity of a neighbour's wall which may affect his wall and ***Dirar* is to harm the neighbour without any benefit to the doer** such as opening a window to expose a neighbour when it is not useful for the doer.

6.1.3 The Urban Concept of the Hadith

From such a Hadith, we may clarify the following:

- Every owner is free to enjoy his property as long as there is no *Dirar*.
- The Hadith covers the harm of anybody outside the property in general. There is no need to have permission from either your neighbour or authorities if the deeds you do inside your building do not harm anyone whatsoever.
- Any harmful initiative to your neighbour is prohibited even though it is done from inside one's own house, whether it harms the neighbour's building or the neighbour himself.
- The Hadith has, therefore, been the pre-eminent in every judgement and case. Therefore all issues regarding harm can be resolved independently using aspects of law derived from it.

Thus there should be no rule that applies to all cases, such as restricting a whole area or quarter to a fixed maximum building height as it is now done in building regulations.

- Every building is dealt with independently and not as a component part of a whole area (i.e. under the control of authorities). Today's municipal regulations force people to leave ample space between the houses (in Egypt, Saudi Arabia, Kuwait etc.), or impose rules for elevations, building heights and treatment of the site or even how to develop their designs. At the risk of having their plans refused, these designs / solutions do not represent the real ambitions of their owners, consequently, the spirit of this Hadith.

6.2 Restraints of Ownership Right and the Extent of the State Authorities in -- Restraining that Right and Preventing *Al-Darar*

Islam gives power to the Governor (or State Authority) to cover a wide range of emergency cases. When Al-Madinah had to meet a great emergency, by arrival of a needy group, the Messenger ﷺ prohibited any savings of sacrifice meat, but when they left, the Messenger ﷺ again allowed saving of it and said, *"I only prohibited that due to the arrival of that group who came to Al-Madinah, but now you may save, eat and make charity"* Thus, the Prophet ﷺ has established a *Summa* (tradition) and rule that the Governor has every right to decide whatever he sees fit for the common benefit of all in emergency cases that require his intervention.

This example reflects the extent of the governor's jurisdiction regarding the application of judicial rules to resolve disputes or handle crisis situations.

6.2.1 Assessment of *Al-Maslaha* (the Benefit)

Al-Ghazali defined *Al-Maslaha* as: *"the observation of religious concepts and targets. This concept is divided into five parts: to keep their religion for them, themselves [their souls and bodies], their offspring, their money and their mind or intellectual powers. All implications of these original five are welfare or otherwise"* (Al-Ghazali, 1980, vol.2, pp.123, 251).

Various scholars have clarified the conditions of *Al-Maslaha*, the main points of which are the following:

- It should be a precise and definite benefit that could not be contradicted by another one that is more important or even equal to it.
- It should be a common / public benefit, not exclusive or special to someone.
- It must be necessary to solve any crisis situation.
- This benefit must be in conformance with jurisdiction or humanitarian issues without any contradiction to any judicial statement, but should be in harmony with the essence of religion and concepts which the religion promotes.

The source and objectives of jurisdiction are defined to be: The Holy Quran, the *Summa* (traditions and sayings of Prophet Mohammed ﷺ) and the consensus of Muslim scholars. Any other things that do not abide by jurisdiction are rejected.

6.2.2 Constraints of Ownership

One essence of jurisdiction upon which the Governor relies when he constrains the ownership is “*No harm and no jeopardy*”. He thus understands that:

- Harm should be removed as much as possible.
- Heavier harm should be replaced by lesser harm.
- Public harm is prioritised over private harm.
- Preventive actions against mischief is prioritised over beneficial revenue.

One of the rules that support the Governor in his constraint of ownership is the principle that accomplishing necessary things allows prohibited ones; in which the necessities are considered by their importance and the obligations do not nullify other rights. In this, public need is equal to necessity and difficulties may be faced if it is not realised.

The assessment of what constitutes necessity and need is referred to by people of knowledge and understanding and those who have knowledge of the welfare of the nation, as Allah said in the Holy Quran: “*If they had only referred it to the Messenger or to those charged with authority among them, the proper investigators would have known it from them (direct)*” (Surat Al-Nisah, verse: 33).

6.2.3 Principles of Interpretation of *Darar* and its Application

"If two harms are present the heaviest must fall down in favour of the lesser one" where the lesser harm is *"what harms the neighbour and he objects to it"*. And the heaviest harm: *"is that which harms the man preventing him to behave in his property and his revenue"* (Ibn Al-Rami, 1982, p.299). In some cases the neighbour would receive the heavier one.

6.3 Types of Harm (*Al-Darar*) and its Related Issues

6.3.1 Visual Harm and Constraints of Right

Concerning the harm of preventing the light and air, is it allowable to prevent these by raising ones house and overshadowing that of a neighbour's property?

6.3.1.1 Right of Building Higher Floors (*Al-Ta'ali*) and Blocking Air and Daylight

Al-Malikiya jurisprudence: Al-Wanshirisi mentioned that Ibn Attab says, *"All kinds of harm must be prohibited except for right of Al-Ta'ali by raising a building which may prevent sunlight and/or air, because it is not considered as harm"* (Al-Wanshirisi, 1981, vol.9, p.60). In the book of Al-Ihlan: *"All kinds of harm must be removed except for raising a building that prevents the winds and sunlight unless the builder intentionally wanted to harm, because it is not for anybody to prevent another raising his building"* (Ibn Al-Rami, 1982, pp.314, 315).

Al-Hanafiya jurisprudence: In the book of Al-Hashiya, Mawla Abu Saud says that: *"If the neighbour has two small windows and then one is blocked by the neighbouring building and the other window is left to provide light for writing, that will be acceptable and the neighbour then is not prevented [from building]"* (Ibn-Abdeen, 1966, vol.5, p.448). Thus, under this judicial view, it is not prohibited to raise the building by adding new floors even if this blocks the sunlight or breeze unless intentional harm can be proved.

Sahnoon says: *"I said to Ibn Al-Qassim 'What if someone raised his house and blocked the window of his neighbour whose room became dark?' Then he replied: 'I did not hear something [about such case] from Malik and I see nothing to prevent the building'"* (Ibn Al-Rami, 1982, p.313). Ibn Al-Rami says: *"This even happened to me. A man had a garden in the vicinity of my house and it had a small window from which he could see the street, I added some structure to my building and raised some floors, thus blocking his small window. He complained to the*

judge. And the judge said to the neighbour: 'You cannot prevent him because he did what he is allowed to do' " Ibn Al-Rami concludes: "Allowance to build new floors is confirmed". This happened many times in Tunisia and no judge found otherwise (Ibn Al-Rami, 1982, pp.314, 315) (see figure 6.2 & 6.3).

From these cases, the author concludes an important observation regarding the interior courtyard which he had not found anywhere else: this is the role of the courtyard in regard with the principle of *No Darar No Dirar*, which becomes critical when the neighbour (s) raise (s) his / their building (s).

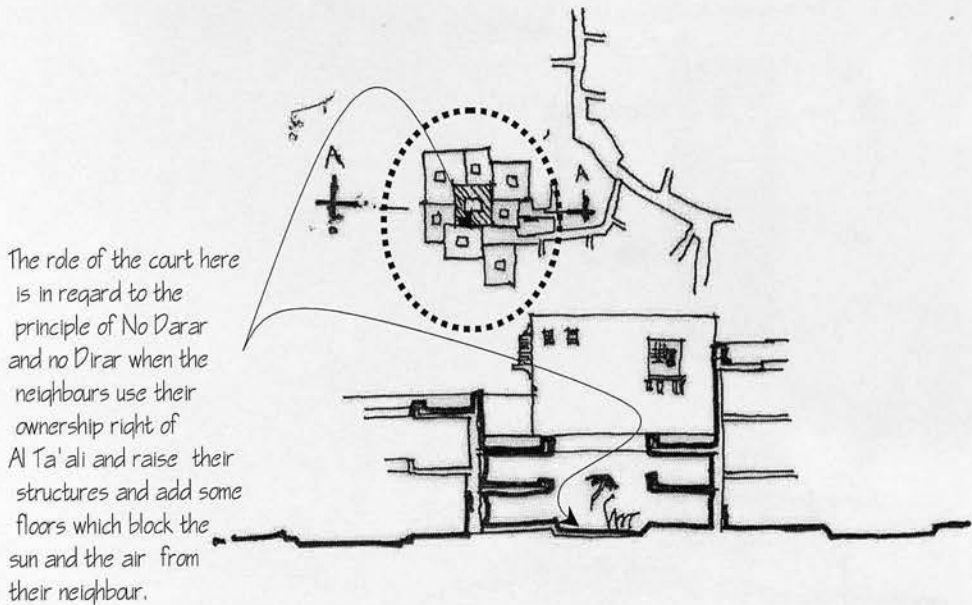


Figure 6.2

The Importance of Courtyards in Solving the Problems Resulting from Applying the Right of *Al-Ta'ali* (Source: the Author).

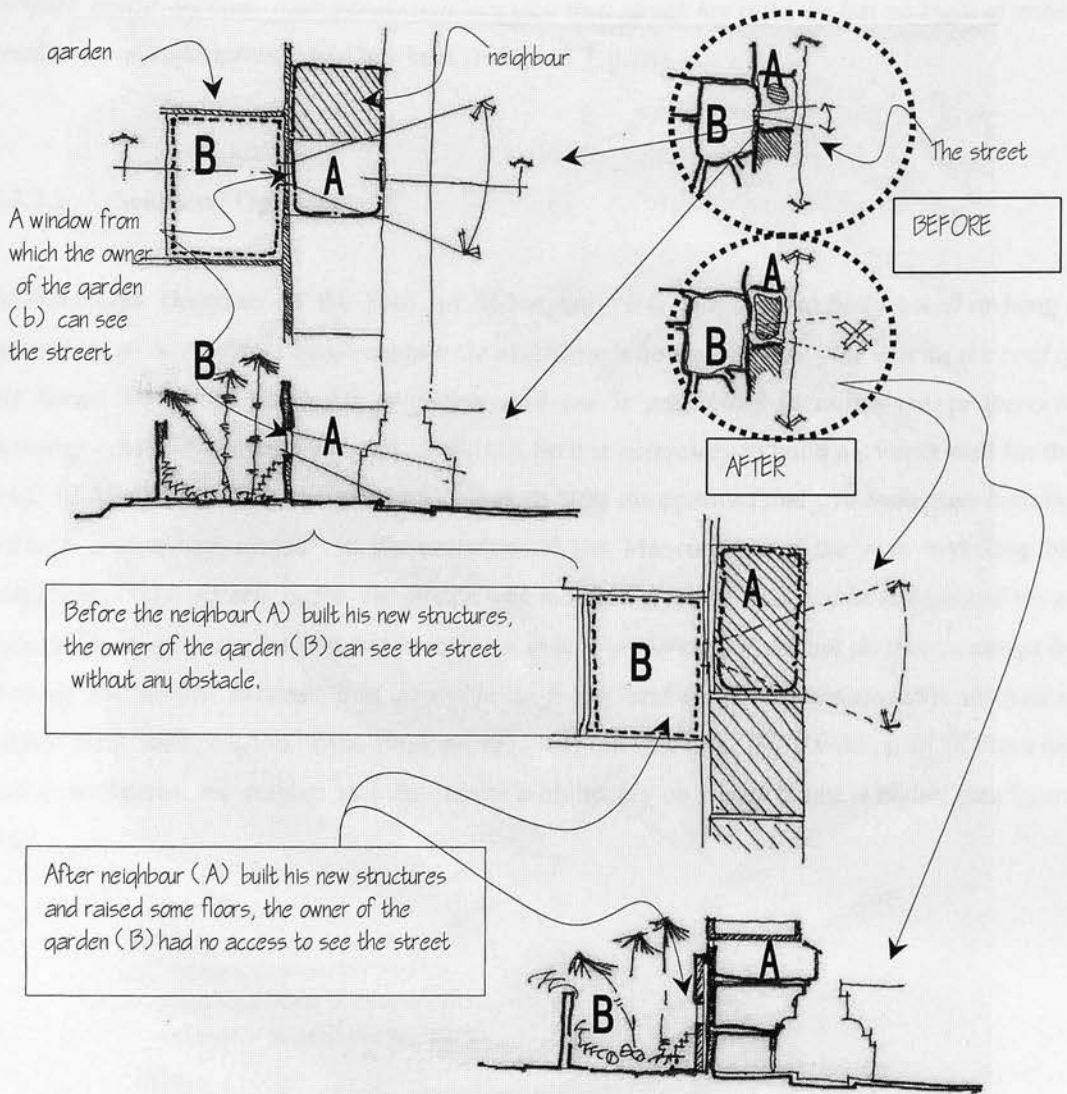


Figure 6.3 Building Higher Floors and Blocking Air and Light from a Neighbour
(Source: the Author).

6.3.2 Visual Harm: Essence and Proof

In Al-Bukhari and Muslim, Prophet Mohammed ﷺ said: “If someone spies into your dwelling without permission, the people have every right and if they threw at him a stone that gouged out his eyes and rendered him blind, there would be no blame on them” (Al-Shawkani, 1982, vol.7, p.26) and in Musnad Ahmed, The Prophet ﷺ said: “Whoever spies into some people’s house without permission, they have every right to gouge out his eye” (Al-Shawkani, 1982, vol.7,

p.26). The Hadith of Prophet Mohammed ﷺ narrated by Al-Nassai: *“Whoever spies into some peoples house without their permission that they then struck his sight, he has no right of either retaliation or redemption”* (Al-Shawkani, 1982, vol.7, p.26).

6.3.2.1 Scholars' Opinions

Al-Hanbaliya Doctrine: In the book of Al-Mughni: *“It is obligatory to build a wall or hang a screen as to not violate by spying into the neighbour's house, because if he was on the roof of his house, he would watch his neighbour and one is prohibited to utilise ones property in harming others”* (Ahmed, 1987, vol.13, p.411). So it is *obligatory* to build a parapet wall for the roof. In Al-Ahkam Al-Sultaniya and Al-Mughni: *“It is disapproved that you raise your building without a cover or screen”* In the narration of Ibn Mansour about the man watching his neighbour, *“The screen is for the person who watches. If it was said that he is required not to descry his neighbour but not necessarily to install a screen, he cannot do that ... except by placing the screen, because it is probable to forget and descry instantaneously, since he is higher than him’ ”* (Abu Yala, 1966, pp.403, 304, Ibn Qudama, 1970, vol.1, p.573). From the above narrations we deduce that the cover is obligatory on whose house is higher (see figure 6.4).

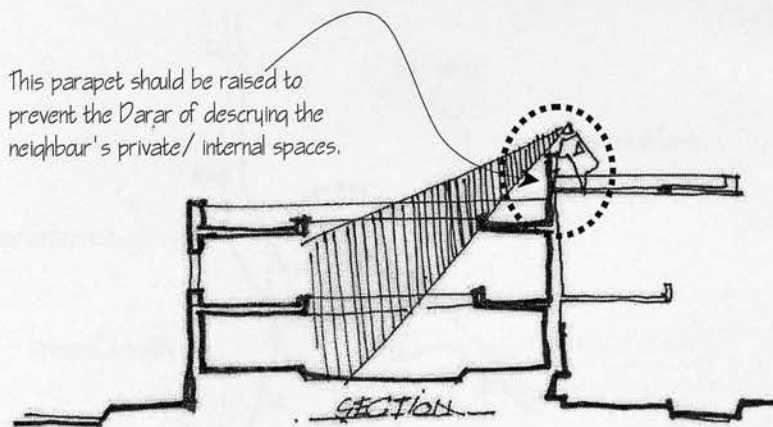


Figure 6.4

According to Al-Hanbaliya and Al-Malikiya Jurisprudence it is Obligatory to Prevent the Harm of Vision through Roofs between Neighbours by Building a Parapet Wall or Screen (Source: the Author).

Al-Shafi'iyah Doctrine: Contrary to the doctrine of Al-Hanbaliya, Al-Shafi'iyah argues that it is not obligatory upon the higher house to place a screen (or a wall), but it is obligatory not to desecrate a neighbour's house.

In the book of Al-Ahkam Al-Sultaniya: *"It is not obligatory on the person whose house is higher than his neighbour to place a screen or a wall, but he should not desecrate on the other"* (Al-Mawirdi, 1960, p.256) and in Al-Majmoh: *"If the roof of his house is higher than his neighbour, he is not obliged to place a screen"* (Al-Nawawi, 1983, vol.13, p.411).

Al-Malikiyah Doctrine: *"The owner of the higher house is prohibited to lift up to the roof prior to building a wall / cover or a screen"* (Al-Wanshirisi, 1981, vol.8, p.444). And when Al-Lukhami was asked about the two neighbours who had agreed not to ascend to their roofs prior to placing a screen, but one of them later refused, he replied: *"Whoever called for building, it is his word, or otherwise, he has the right to prevent his neighbour from going up to the roof"* (Al-Wanshirisi, 198, vol.8, p.444). Ibn Al-Hajib mentioned that: *he [Ibn Al-Hajib] ordered to tear down a platform for a shop beside [and probably facing] a public bath for women because of the sitting of men in the platform and spying the entrance to the bath"* (Al-Wanshirisi, 1981, vol.9, p.23) (see figure 6.5).

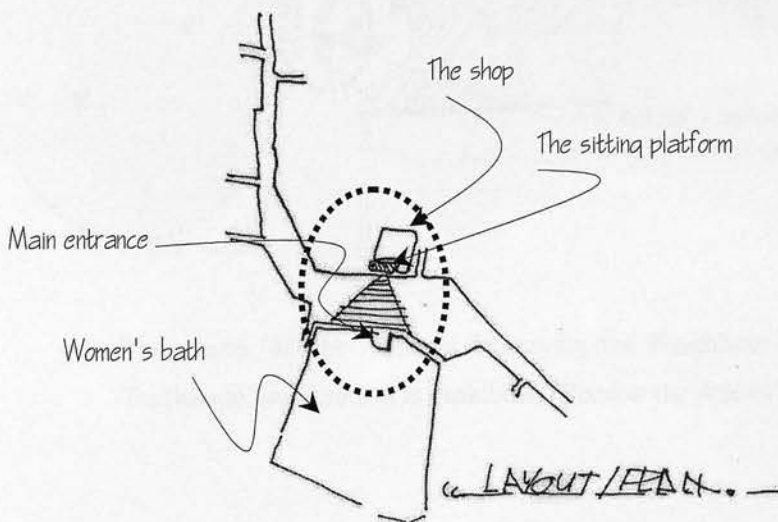


Figure 6.5

The Harm of a Platform Used for Sitting and Every Similar Usage Being Beside / Facing the Women's Public Bath is Prohibited and will not continue (Source: the Author).

6.3.2.2 Describing the Roof of the Neighbour

Ibn Rushd was asked about a new built minaret for a mosque and the neighbours complained about the exposure of their houses. He replied that: *“When the balcony of the minaret [from where the Muezzin stands to call for Sala] overlooks the houses must itself be covered (Al-Wanshirisi, 1981, vol.9, p.24) (see figure 6.6).*

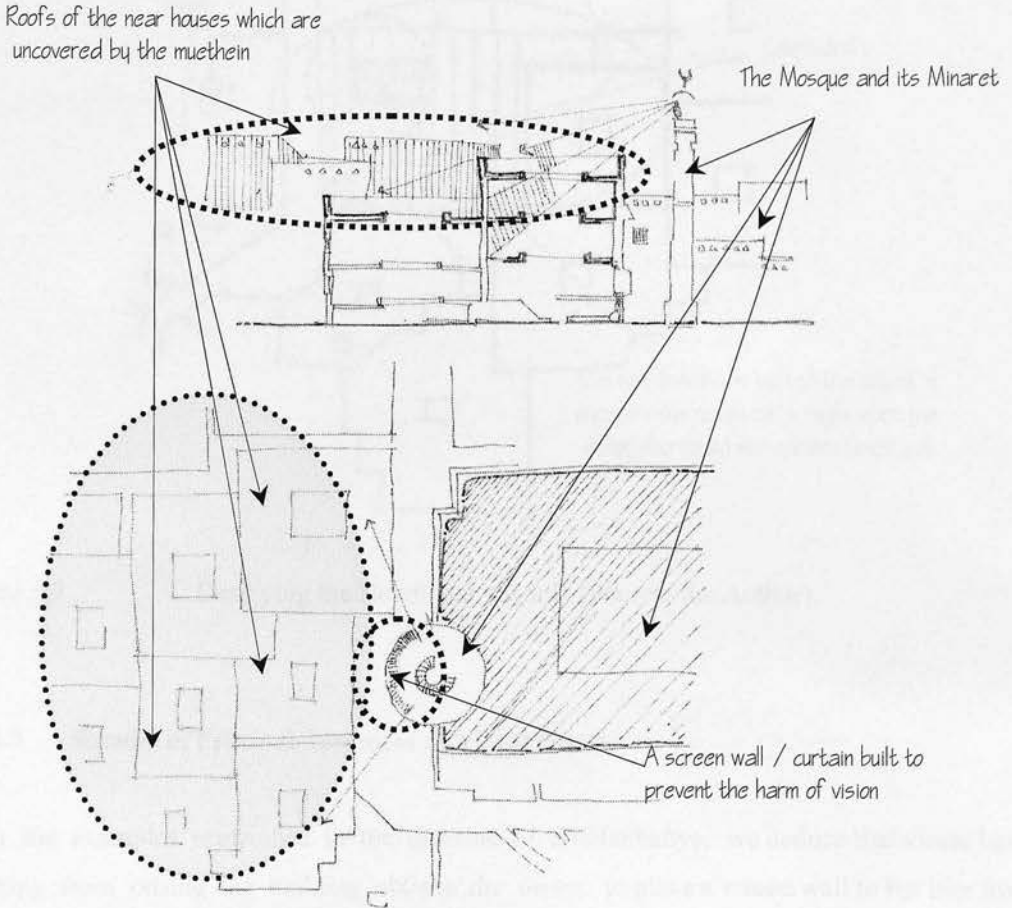


Figure 6.6 The Harm of the Minaret Describing the Neighbour's Roofs in the Traditional Environment is Prohibited (Source: the Author).

In another similar case the judgement was different; *“A man had built a building and opened in it some small windows opposite his house [garden or courtyard] and there was a wall, [like a garden fence for example], which he then shortened. Some of the owners on the other side of the street said to him: ‘these small windows overlook what is on my roof’. Then the builder said ‘I only did that to make more light into my building not to hurt anybody’. The Judge Ibn El-Dabit, [one of the Tunisia Judges] replied: ‘He should not be prohibited except if it is anticipated that*

he may view the interior of the house and its sleeping and living rooms. As for the roof of the house, he should not be prohibited' " (Al-Wanshirisi, 1981, vol.8, pp.449, 450) (see figure 6.7).

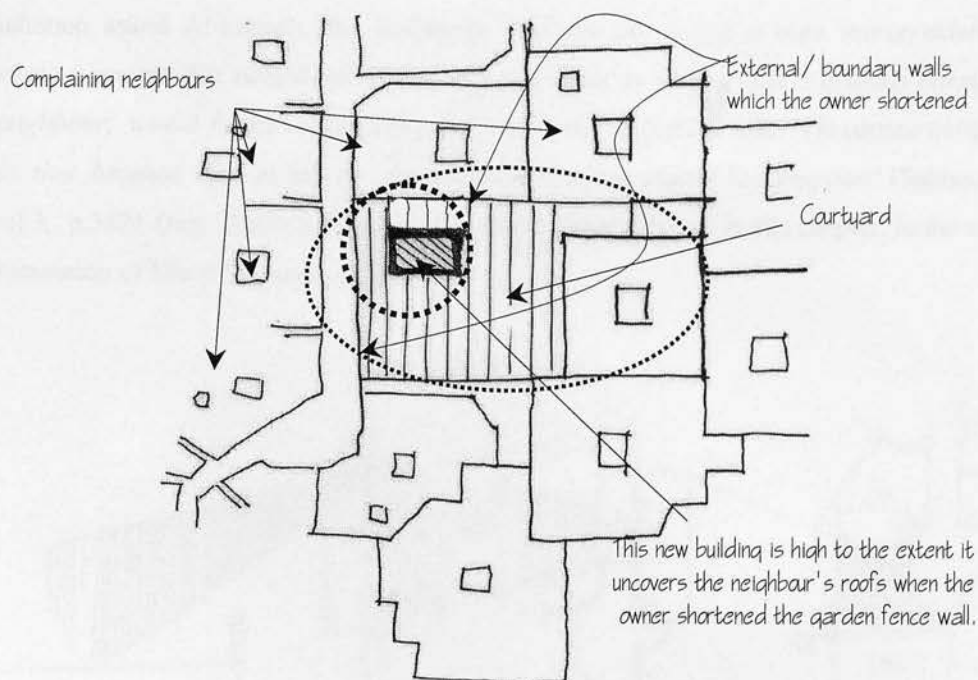


Figure 6.7 Describing the Neighbour's Roofs (Source: the Author).

6.3.2.3 Results of Previous Instances of Visual Harm

From the examples mentioned in the doctrine of Al-Hanbaliya, we deduce that visual harm resulting from raising the building obliges the owner to place a screen wall to bar him from accidentally seeing his neighbour. From the doctrine of Al-Shafi'iyah, this is not necessary as long as he does not spy his neighbour because it is not constrained by harm. From the last few examples which relate to Al-Malikiya doctrine we would deduce that, in the first case, the neighbour is prohibited to go up to the roof prior to placing a screen wall and, in the second case, the building which causes the harm (as in a platform) must be removed, since, it allows seeing the neighbour. In the last case, that of the minaret overlooking the neighbours, the part that spies the houses should be screened.

6.3.3 Door and Window Openings

6.3.3.1 The Right of Continuity of Use of an Old Window Even if Harms a New Neighbour

Sahnoon asked Al-Faqeeh Ibn Al-Qassim “Do you not see if a man has an existing small window toward his neighbour, or an old door that is useless but is actually harmful to his neighbour, would he be obliged to close it up?” Ibn Al-Qassim said: ‘He cannot oblige him to do that because that is not an innovation or newly produced building part’ (Sahnoon, 1978, vol.3, p.382) (see figure 6.8). This is covered in detail later on in this chapter, in the section of Possession of Harm ‘Hiyazat Al-Darar’.

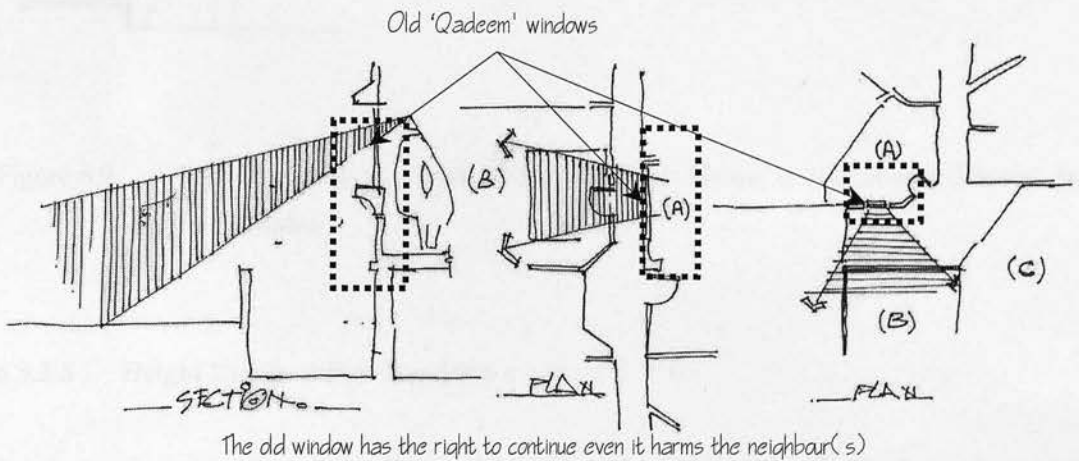


Figure 6.8 The Right of Continuity of Use of an Old Window Even if Harms a New Neighbour (Source: the Author).

6.3.3.2 Removal of A New Window Which Harms a Neighbour

Sahnoon asked Ibn Al-Qassim, “Did you see the man opens, in his own wall, a small window or a door opposite his neighbour, which will hurt him. Would he be prohibited to do that as per Malik? He [Qassim] said ‘I was told through Malik that he has no right to make anything that hurts his neighbour’ ” (Sahnoon, 1978, vol.3, p.382) (see figure 6.12). The same case was also said in Al-Modawana Al-Kubra that Sahnoon asked: “If someone built a Qaser [high building or a palace] in the vicinity of my house and thereby raised up doors and windows that enabled him to descry my family or house, should I prevent him doing that as per Malik?’ He said, ‘Yes, he must be prohibited!’ ” (Sahnoon, 1978, vol.3, p.385) (see figure 6.9).

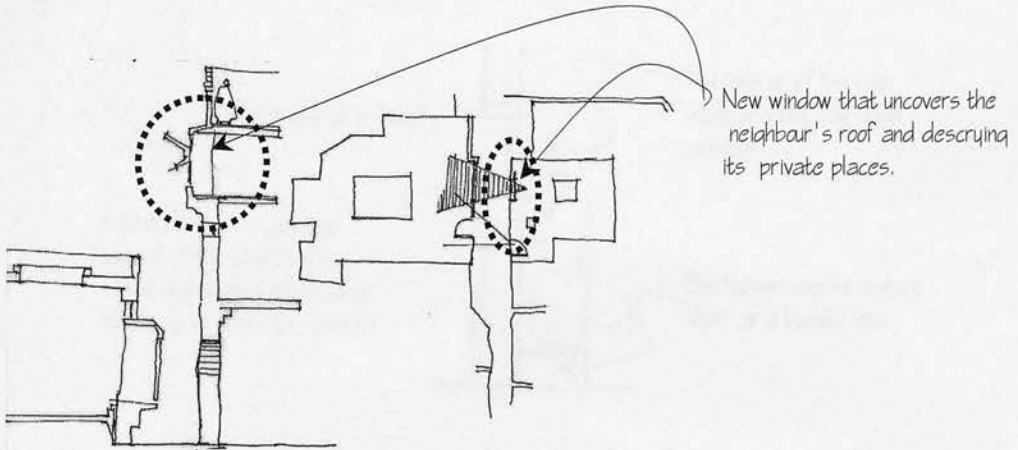


Figure 6.9 Removal of a New Window Which Harms a Neighbour (Source: the Author).

6.3.3.3 Height Limits of New Windows

Ibn Luhaya'a ؓ wrote to Omar Ibn Al-khattab ؓ asking about a man who built a new room in the vicinity of his neighbour in which he produces a new window: "*Omar replied 'A Sareer [raised sitting platform] should be put under that small window and a man made to stand on the Sareer. If he can see the interior of the neighbour's house, the window should be removed, but if he cannot, he would not and the window could be retained'*" (Ibn Al-Rami, 1982, p.308) (see figure 6.10).

Ibn Al-Rami provides an alternative interpretation of *Sareer* as the furniture of the room, or a ladder but decided that *Sareer* is a chair or something similar. The teacher Mohammed said: "*To me the limit of the window height is five shiper [1.25 m.] and the lower height four shiper*" (Ibn Al-Rami, 1982, pp.308, 309).

Ibn El Hindi writes, "*As for the doors of rooms, they are more harmful than the main door and whoever innovated a door to any room from which he can descry the interior of his neighbour's Austowan [interior and entrance] he should be prohibited. Because the room is a dwelling and it is very harmful to see its interior*" (Al-Wanshirisi, 1981, vol.9, p.14).

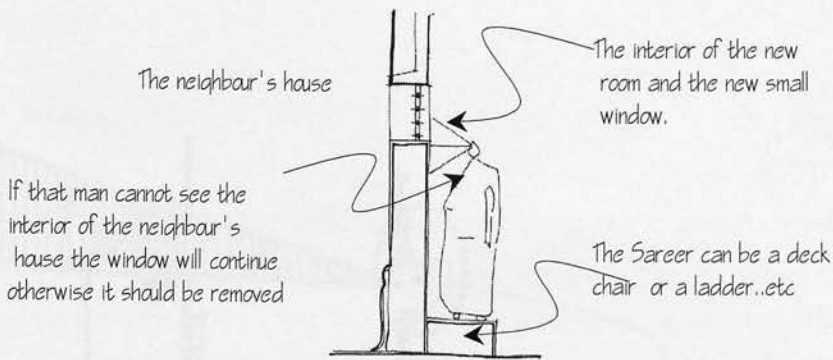


Figure 6.10 Height Limits of New Windows (Source: the Author).

6.3.3.4 The Screen Wall on the Stair Case

Ibn Al-Rami (1982, p.313) says: *“There was a staircase in a man’s house and there was a screen for this stair, which later fell down and every one who climbed by that stair was able to look at his neighbours. Then the neighbour requested him to replace the screen and they raised the issue up to the judge. The judge did not oblige him and said, ‘He should not be obliged [to build] but will be punished if he ascends to the roof’”* (Al-Wanshirisi, 1981, vol.8, p.452).

6.3.3.5 Comparison Between the Window and Doors in the Higher Floors

Ibn Al-Ghammaz focuses on the relative harm associated with the windows and doors of higher floors: *“The door is actually either opened or closed for entering and getting out with no alternative, whereas the small window is a chance to anybody who might see you without seeing him and since it is for seeing it could be very harmful”* (Al-Wanshirisi, 1981, vol.8, p.452).

6.3.3.6 Measurement of Harm Intensity and the Factor of Distance

From Ibn Wahb we learn: *“If opening the door onto the roof is harmful to the neighbour where there is no way but to descry the neighbour’s residence when the owner goes in and out, this should be prohibited”* to which Ibn Al-Rami says: *“The harm could be determined if somebody*

stands at the door and sees if he can discern the faces inside. If he did not see any, that means there is no harm” (for more details review Al-Wanshirisi, 1981, vol.13, p.309-312) (see figure 6.11).

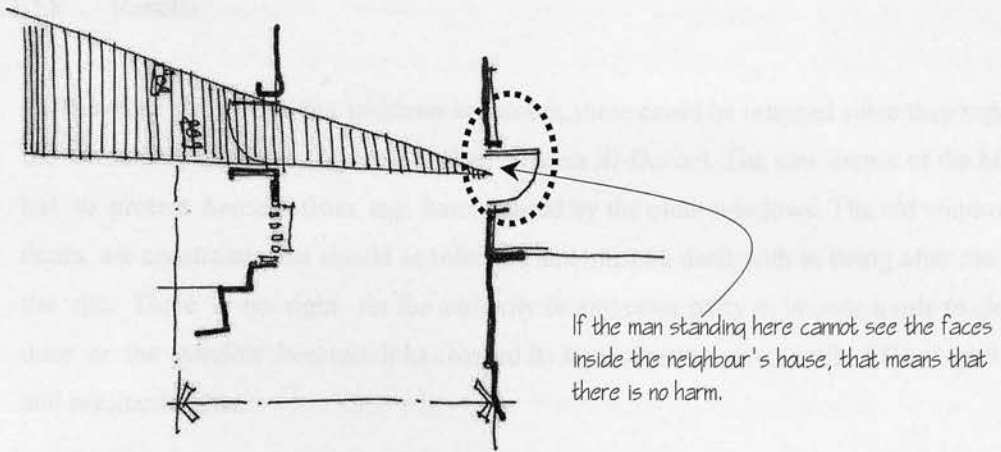


Figure 6.11 Measurement of Harm and the Factor of Distance (Source: the Author).

6.3.3.7 Opening Window in the Garden Towers

In the case of a person opening a window in a tower from which he may view the gardens of his neighbour, Al-Wanshirisi in Al-Mi'yar Al-Moarab says: “I went to Tunisia at the beginning of this century and I was told by some of our scholars: ‘one of those who had knowledge of the dignitaries of businesses made a small window in his garden tower from which he saw the garden of the Marriage Judge of that time. They raised this case to a Judge named Al-Faqih Abu Isshac Ibn Abdul Rafie and I saw from his judgement that there was an instruction to screen such a small window to prevent one from looking upon the aforementioned garden. I do not know whether this was done by the judgement or by a mutual agreement between both neighbours’” (Al-Wanshirisi, 1981, vol.8, pp.451, 452).

Ibn Al-Hajj says: “There can be no dispute about prohibiting looking at houses, or farms and no disputes in buildings from which one might see through” and, according to Al-Faqih Abu Ali Ibn Abdul Sayed: “Every small window made recently on a garden must be blocked and it is prohibited to open any small windows in which there is no difference between a garden and a vineyard for his owner needs sometimes to walk in it with his family. He may yet sleep under a tree, or eat, or go to the toilet or to do what he wants, whenever he wants. Since he does not

know who is watching him, he wants to protect himself from those who may be in the window of the tower and that is a very heavy harm” (Al-Wanshirisi, 1981, vol.8, pp.451, 452).

6.3.3.8 Results

- In the examples of existing windows and doors, these could be retained since they represent the ownership of an existing harm (called *Hiyazat Al-Darar*). The new owner of the building has to protect himself from any harm caused by the older windows. The old windows and doors are constraints that should be tolerated and must be dealt with as being after the fact in the site. There is no right for the authority or any other party to impose a rule to close the door or the window because it has earned its legal situation as a result of *Ihya'a* principles and resultant rights.
- In the case of a new window or door, the new feature which harms the neighbour must be removed in the event the neighbour protests. The noticeable thing here is that the harm precedes the protest of the neighbour which means that it is very important that the neighbour has to claim the harm done by this deed and this would have to be done within a special period of time or his right to remove the harm will fail as will be shown later on.
- In other cases where a neighbour could be desecrated, the prohibition of the harm depends on the intensity and quantity of potential harm. This is known in *Shari'a* as *measurement of the intensity of the harm deeds*. For the window, harm is measured by the height of the window and whether it exposes the neighbour. Other constraints would be added to measure the intensity of this type of harm like the power of the eyes of the seer. Also constraints upon usage would enter as a factor of measuring harm.
- In comparing the harm made by windows and doors in the higher floors, the harm of the window is more than the harm of doors because doors are for access and are most often closed and do not offer accidental views. On the contrary, windows are for sitting at and looking from and that could cause great harm. The measurement of the visual harm would be determined by standing in the window or the door in question and looking out upon the house of the protesting neighbour. If the *Faradi* (the appointed person from the judge to solve the dispute) decides that it reveals or exposes the privacy of the neighbour, the window or the door would have to be removed or changed to a new place (which is known in the traditional environment as *Tankeeb*).

- In examples concerning the opening of windows in garden towers, the case was clearly in a low-density residential place and not in a compact urban area with buildings attached. Here the harm of revealing the privacy of the neighbour also depended on the place of each house and the location of the openings and the place where it viewed the neighbour's court, rooms or other private areas in that property. Its situation is determined through measuring the intensity of the harm. Here, each opening is a unique case and is treated in a different way than other cases. Yet it is interesting to note that the same principle of harm applies to low-density as well as high-density Islamic settlements.

It is clear from previous cases that people differ in their feelings and concepts of harm and therefore in its definition. Therefore, either the neighbours can sit and discuss the harm and ways to solve it or they could refer the case to the judge and accept his judgement. In the traditional environment what happened came about entirely as a result of the inhabitants' decisions; they were the party responsible for that part of the environment. Even those provisions which allowed the harm of the new openings to continue forced, at the same time, the owner of the harm to find a solution to protect his neighbour from that harm.

The cases which are known and were recorded are a mere fragment of what happened in a traditional environment, the cause of which was the agreements between the neighbours on site without needing to solve it through formal judicial process.

The previous examples are only for openings, which represent just one aspect among a vast variety of elements in the environment which, naturally, were adjudicated by the same rules previously presented.

6.3.4 Auditory Harm

6.3.4.1 The Harm Caused by Noise, Beating, knocking or Shaking

Ibn Al-Rami says: *"A man established a group of mills in his house and his neighbour complained about the noise"* Abu Baker Ibn Abdul Rahman said, *"If two harms are gathered together, the lesser should be continued and the heavier should be cancelled. Therefore the man was prohibited to use his mills in his home for his sustenance against the noise that disturbed his neighbour. And I [Ibn Al-Rami] attended Mohammed Ibn Omar Ibn Lubahab who was*

asked about this issue and *Al-Naddafeen / Al-Qattaneen* [people working in textile] in which they work during night and day, he advised that they should not prevent them and nobody may prohibited from using the iron thereof' (Ibn Al-Rami, 1982, p.213).

Conversely, Ibn Al-Harith said in such an event, harm has levels and using mills beside the walls of the neighbour where its noise cannot be stopped is more harmful and the complaint of the neighbour should be considered and the harm should be prevented (see figure 6.12).

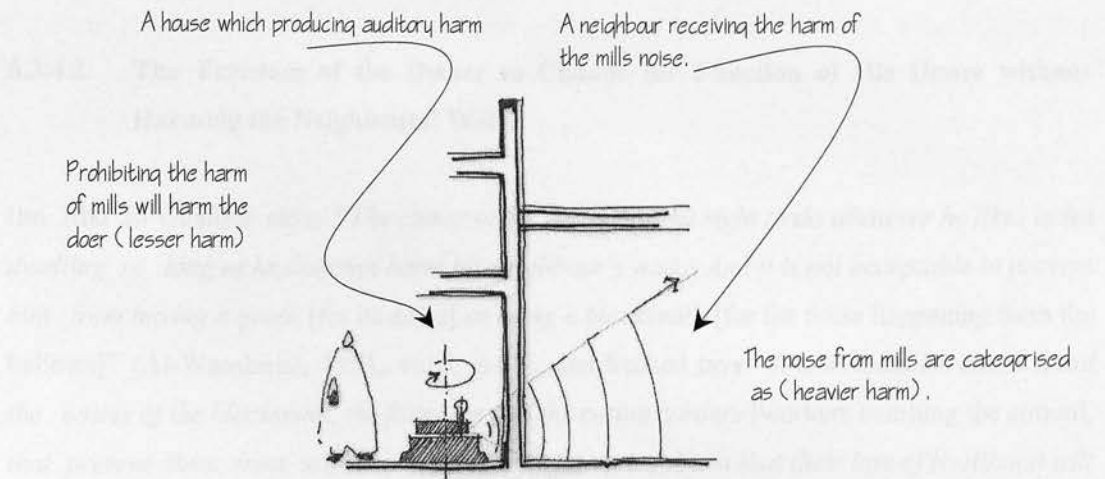


Figure 6.12 The Harm Caused by Noise, Beating, knocking or Shaking (Source: the Author).

Al-Malikiya used this rule of harm to find that toilets and wells that would spoil a neighbour's well, should be prohibited and reinstated (filled up with earth) (Ibn Al-Rami, 1982, p.408) (see figure 6.13). This issue will be covered later on the section of *Al-Qadeem Darar*.

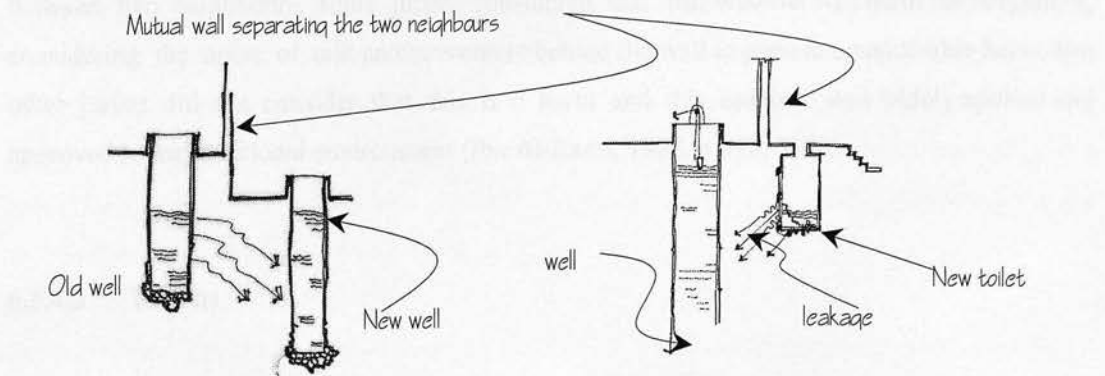


Figure 6.13 Assessing *Darar* According to its Level led to the Prohibition of a New Well and the New Toilet to Continue in the Traditional Environment (Source: the Author).

Ibn Al-Rami says: “Auditory harm includes different levels of knocking or beating. There is a kind of noise which will harm the walls with shaking more than other types. Thus, what harms the walls will be forbidden by consensus of all the scholars” (Ibn Al-Rami, 1982, p.303). Ibn Al-Qassim says: “The tenant has the right to behave as he wants in the house he rents by putting his luggage, or animals in it or using it as a blacksmith, perfumer or spice dealer, so long as he does not harm the building” (Sahnoon, 1987, p.303).

6.3.4.2 The Freedom of the Owner to Change the Function of His House without Harming the Neighbours’ Walls

Ibn Abd El-Ghafour says: “The owner of the house has the right to do whatever he likes in his dwelling so long as he does not harm his neighbour’s walls. And it is not acceptable to prevent him from having a quern [for its noise] or being a blacksmith [for the noise happening from the bellows]” (Al-Wanshirisi, 1981, vol.9, p.61). Ibn Rushed says: “It is well-known that it is not the noises of the blacksmith, the fomentor and the cotton carders [workers combing the cotton], that prevent them from utilising their houses for their jobs as that their loss of livelihood will cause more harm than the harm of sound disturbing the neighbour (Al-Wanshirisi, 1981, vol.9, p.60). In Tolaytila (now the city of Toledo in Spain) the jurists judged that “If the neighbours are damaged by the sound of blacksmiths working at the same time and protest at the harm caused by the strong sound of their hammers, the harm will be prevented (Ibn Al-Rami, 1982, p.303).

Concerning the harm of a high window, for light opened by an owner into a common wall between two neighbours, some jurists considered that this window will harm the neighbour, considering the noise of talk and movement behind the wall to present considerable harm. But other jurists did not consider that this is a harm and this opinion was widely applied and approved in the traditional environment (Ibn Al-Rami, 1982, p.312, 313).

6.3.4.3 Results

- In the traditional environment types of deeds that harm walls are prevented. However, what harms the residents remains a controversial issue.

- The tenant or owner of the property's utility has the right to use the house to earn a living so long as he does not harm his neighbours. No one has the right to prevent him from doing so. This is applied under the principle *if two harms occur simultaneously the heavier will be discarded and the lesser will be sustained* thus the noise harm done by the owners of the houses or the tenants may continue (and this may be because of the nature of the environment itself and the way the people lived).
- Most jurists do not consider sound to be a harm except for Ibn Al-Harith who claimed that harm has various levels, so sound should be measured and be treated accordingly. Auditory harm is a low priority and is of less consequence than other types.

6.3.5 Olfactory Harm

6.3.5.1 The Harm of Slight and Severe Smoke

Ibn Qudama says: *"smoke is the parts of neighbour's fire that leaks into a neighbour's properties. Thus it is a part of fire"* (Ibn Qudama, 1970, vol.4, p.432), but we could not consider the harm coming from the smoke of a house's baking ovens because it is a family necessity. Thus, we cannot guard against this.

6.3.5.2 Harm of Ovens and Toilets

In his book Ibn Al-Rami quoted a case as follows: *"If a man built an oven in his house and beside his neighbour's wall and it does not harm him but this oven will reduce the price of the neighbour's house, is this a harm?"* The jurist's judgement was to prevent such harm because of the danger of the oven itself and also for the increase in people coming to buy bread. This was harm for the neighbour. Some of the jurists do not see this as a harm and agree that such a use should be continued (Ibn Al-Rami, 1982, p.301).

Sahnon asked Ibn Al-Qassim: *"Do you see it as a harm to build an oven inside a house? The reply was that: 'I learn nothing from Malik concerning the ovens built inside house [for baking] and he [Ibn Al-Qassim] does not see it as a harm'"* (Sahnoon, 1978, vol.3, p.392).

In the book of Al-Modawana Sahnoun says: *“I said to Ibn Al-Qassim: ‘If I had a courtyard beside someone else’s house and I wanted to build a toilet or a baking oven and my neighbours did not agree, have they a right to prevent me from building?’ The answer was: ‘If this makes a harm for them [smoke or noxious smell from the toilet] so it is obviously prohibited Malik’s saying was to prevent him from harming his neighbour’ ”* (Sahnoun, 1978, vol.3, p.302).

6.3.5.3 The Harm of Severe Smoke

Severe smoke occurs in mills in which millers fry their barley. Concerning this, Ibn Al-Rami said *“ Ibn Abdul Rafi send him to examine the harm extent of smoke according to the complaint of some people. A brazier was examined and he wrote in a document that its smoke was severe and hurting the neighbours, thus he ordered it to stop”*. Thus Ibn Al-Rami describes that it was not anybody’s right to produce a harm without the agreement of his neighbours. (Ibn Al-Rami, 1982, p.301). Ibn Al-Rami continues: *“Sahnoun said, ‘If the man who built a new oven for smithery on the common wall between him and his neighbour and then produce a harm for the neighbour he must then be prevented’ ”* (Ibn Al-Rami, 1982, p.302).

6.3.5.4 The Harms of Noxious Smell

As for noxious smells, which include those of the tannery, waste channels and toilets Ibn Al-Rami says: *“Concerning the noxious smell it is also prevented if the neighbours protest against it”*. Also Ibn Hbeeb asked Motarrif and Ibn Al-Magashoon: *“A man built a tannery in his house and his neighbours complained from the smell which reached them. Motarrif and Ibn Al-Magashoon replied that: ‘it must be removed’ ”* (Ibn Al-Rami, 1982, pp.302-303). Also it is imperative to remove the harm of the smell of the toilet and the waste channel (which is inside the house of the channel’s owner) if its smell reaches the neighbours.

From the previous examples:

- The smoke of the baking oven is not considered as a harm which must be prevented
- The harms of toilet, blacksmith and furnace fumes are prohibited for the noxious smells they produce.
- New adverse behaviour should be prevented unless the neighbour claims to accept it.

- The building of a new tannery or a disposal channel which is not covered and causes harm to the neighbours, is prohibited.
- Accordingly it is not the right of any person to build a public bath which uses a charcoal which produces a severe smoke among residential quarters without the permission of that quarter's residents, or to build a baking oven [furnace] between the shops of perfumers or spice dealers without their permission.

6.3.6 General Results of the Harm

- Jurists do not count auditory harm as a harm but they consider the harm of shaking the walls from any one who produces noise.
- Visual harm differs from the olfactory and auditory harm because it is coupled with the behaviour of inhabitants and the opinions of the jurists differ about the proper action concerning the doer of harm.
- Olfactory harm influences the placing of toilets inside the houses by building them far from the common wall between neighbours.
- Newly functions which produce harm are prevented in case of residents' protest.
- The Hadith of harm (*Darar*) is applied to two levels, the external behaviour of the building and the internal behaviour of the residents.

6.4 Principle of *Al-Ta'assuf* (Aggressive Conduct) in Using the Right and the Law of *Darar*

It is important to distinguish between two types of excessive harmful deeds in the traditional environment; one of them is lawful and is known as *Al-Ta'assuf* and the other one is unlawful and known as *Al-Ta'addi* (Oppressive Conduct).

6.4.1 *Al-Ta'assuf* (Aggressive Conduct)

Al-Ta'assuf is the resolution of the owner using his right in an aggressive way, causing harm to others. This may be legal for him but yet harmful to others as a result some of its side effects. For example when an owner builds a higher floor which blocks light and air for his neighbour, this is aggressive behaviour.

6.4.2 Al-Ta'addi (Oppressive Conduct)

The illegal action such as projecting a part of one's house into or over a neighbour's house. This is considered an oppressive conduct against the neighbour's property and it is prohibited by consensus (see figure 6.14).

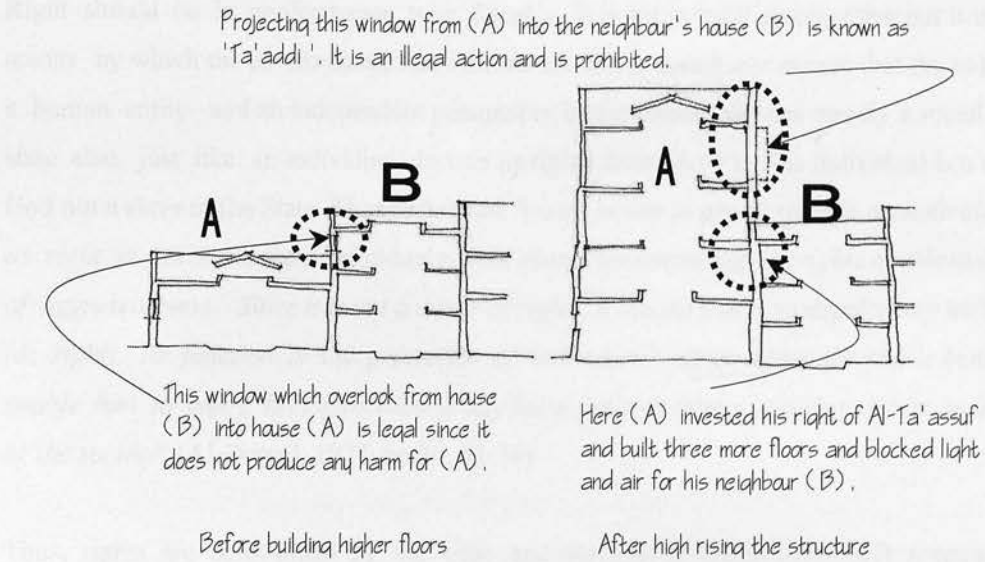


Figure 6.14 The Concept of *Al-Ta'assuf* and *Al-Ta'addi* in the Traditional Environment and the Difference between Them (Source: the Author).

Al-Ta'addi covers both vertical and horizontal cases, such as blocking the airflow by building or even by allowing the branch of tree, to do so “If a branch of a tree disturbs a neighbour, he has every right to request its removal. If not, he may turn it out of his property and if he could not, he may cut it, without the need of any permission from the judge” (Al-Nawawi, 1983, vol.10, p.329)

The question now is what is excessive conduct limit that gives rise to these environmental issues? To answer this we have to know that the “definition of right differs from one part of ideological doctrine to another and that it is derived from *Shari'a*” (Al-Dereni, 1979, pp.40-62).

6.4.3 Judicial Points of View towards Rights

Islamic jurisdiction divides rights into two parts: individual right and Divine Right, which is the right of society related to the Public Right. This is an endowment from God (the Decree Maker)

to human beings and that is why it is under the constraints elucidated by Allah.

6.4.4 Conditions of Rights

Right should be in conformance with *Shari'a*. It is not in itself an objective but it is a tool or means by which the environment was formulated. These conditions ensure that the individual is a human entity and an independent personality in the community not merely a social tool. The state also, just like an individual, derives its rights from *Shari'a*. The individual is a servant to God not a slave to the State. Thus *"The State has no power to give a right to an individual, since its right is not more than individual rights; except for exceeding the rights of others or in case of aggressiveness. Since it is not a donor of rights, it has no power to deprive any individual of his rights. Its function is the protection of individual's rights within the public benefit yet to enable him to enjoy his rights without any harm towards others, whether this be an individual or the society"* (Al-Dereni, 1977, pp.26, 64-74).

Thus, rights are constrained by the aims and concepts of jurisdiction and its inspiration. The aims of jurisdiction are kindness, mercy and good deeds together with brotherhood, self-denial and co-operation. Its concepts are based on ideals such as justice and welfare.

6.4.5 *Al-Ta'assuf* and the Inhabitants Right to Change the Use of Their Buildings

This part of the dissertation investigates whether inhabitants have the right to change the use of their houses. In this matter jurists present two alternative views: Al-Malikiya and Al-Hanbaliya parties prevent harm and aggression and Al-Shafi'iya and Al-Hanafiya prohibit aggression but allow harm.

Under Al-Malikiya and Al-Hanbaliya's jurisdiction, inhabitants have the right to change the use of their houses if it does not harm their neighbours. This imposes limitations of behaviour on the owner.

Al-Malikiya said in Al-Modawana Al-Kubra *"Sahnun asked Ibn Al-Qassim: 'can a man build a mosque and then build over it a house?' The reply was this produces blight and it is unpleasant and Malik hated such an idea very much"* (Sahnun, 1978, vol.3, p.399).

Al-Hanbaliya, in Al-Ahkam Al-Sultaniya says: “in spite of the jurists’ dislike of the aggressive acts, they did not prevent them. This was an indication of the extent of freedom which the inhabitants enjoyed since the harm could not be proven on the part of others” (Abu Yala, 1969, p, 184).

Al-Shafi’iya and Al-Hanafiya do not prevent the harm inside the inhabitant’s houses and properties. Al-Shafi’iya says: “If the owner of the house built an oven in his place and his neighbour suffered from its smoke and protested, the harm would not be prevented for the people have the right to behave as they like inside their houses. Even if a person built a mill or a smithy or butcher’s shop it is his full right to do so and no one has the right to prevent him from his benefit of ownership” (Al-Mawirdi, 1966, p.255). As concerns Al-Hanafiya they did not prevent such deeds which cause harm, such as digging a well which will harm the well of a neighbour (Abu Youssof, 1962, p.99).

6.4.6 Unusual Behaviour and the Liability about the Deeds

An example of unusual behaviour which incurs a special liability is the lighting of a fire on ones land during a stormy day, which spreads to a neighbour. It is then the fire lighter’s liability to pay for whatever the fire destroys. Whether jurists consider this or not depends on their interpretation of the Hadith. Some see that the harm Hadith does not include a provision preventing the owner from doing harm. Thus, if a person did cause a harm inside a property which will affect the neighbour, *Shari’a* gives the same right to his neighbour to introduce a method of protection against that harm. An example of this, “A man came to Abo Hanifa [the jurist] complaining about a well built by his neighbour, fearing that it would affect his wall. Abo Hanifa advised him to dig a waste channel in his property beside the well of his neighbour. The man did and the waste channel oozed into the well and spoiled its water such that the neighbour was forced to fill up his well with earth” (Abu Youssof, 1962, pp.100-102).

Here the neighbour was not advised to remove the harm but, on the contrary, was given a method to remove the harm of the well. That means that every person will hesitate before venturing a deed that harms the neighbours. This produced a community that is accustomed to sitting with one another to solve problems. If they cannot agree about certain differences, they can carry their disagreements to the judiciary. This results in a type of organisation of the environment and of social conventions. These conventions became the foundation of the

community which with the accumulation of environmental deeds became the stable entity that formed the traditional city.

From what has been stated it is clear that:

- Decisions related to the right of acting aggressively were resolved by the inhabitants themselves and among those who lived in the neighbourhood.
- The External interference from central authorities was non-existent, nor were there established laws organising the relations between neighbours or forcing them to obey specific planning regulations.
- All decisions correlate to the agreement of the inhabitants, which was bounded to their feeling of harm.
- The lesser harm was approved either by the consent of the neighbourhood or because of the formal legal opinion of the jurists allowing the owner to benefit from his property. Alternatively, minor harm was allowed by finding a way to prevent it from reaching the neighbour which was known in *Shari'a* as *stratagems against harm* and this is our next subject.

6.5 Categories of Darar

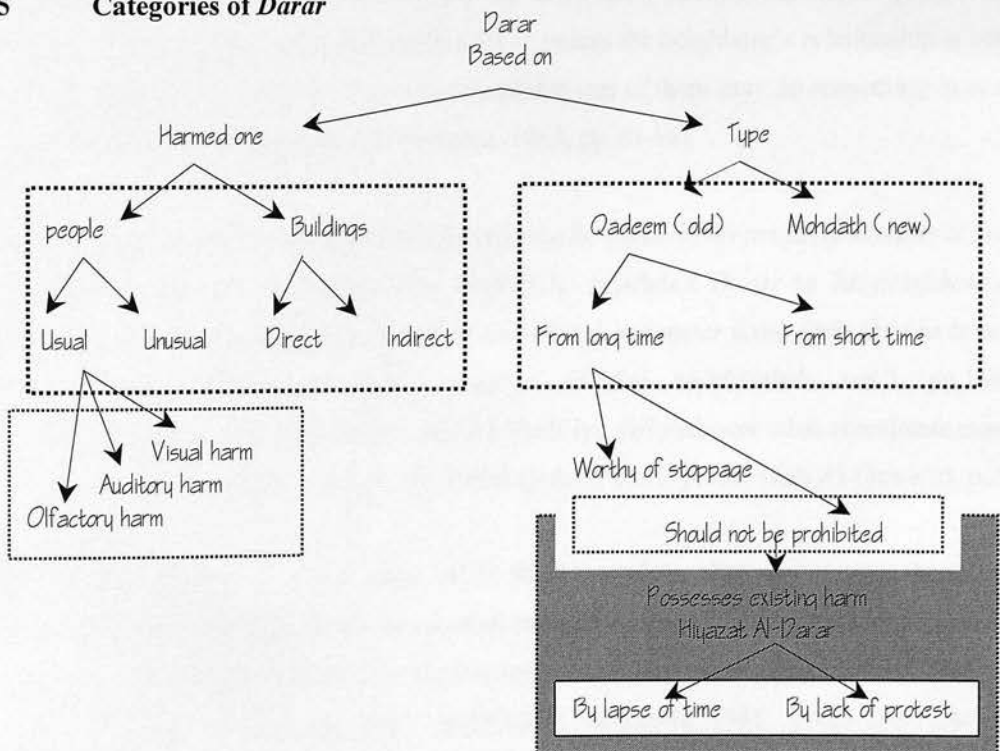


Figure 6.15

Categories of Darar (Source: the Author).

6.5.1 **Darar Based on the Harmed One**

This section is divided into harm concerning individuals and harm concerning the community, for ownership in Islamic jurisdiction is a private right but it tied to a social organisation, where the common interest is in sustaining permanent balance between the owner and the individuals that make up the community (see figure 6.15).

6.5.2 **Darar concerning Individuals**

Harmful conduct to neighbours takes two forms:

Unusual conduct which is excessive and for which there is a guarantee by compensation. Unusual conduct has numerous examples such as the neighbour who sets a fire on a stormy day, or a person who converts his own house into a laboratory for producing ammonia, which causes health hazards.

Usual conduct that is still harmful as were visual, auditory and olfactory harms covered earlier in this chapter. Not all scholars agreed that intentional harm should be prohibited.

Al-Hanafiya and Al-Shafi'iyah agreed that the intentional harm should not be prohibited (Ibn Abdeen, 1979, vol.5, pp.443, 448, vol.6, p.747), unless the neighbour's relationship is between low and high floors, because it is not allowed that one of them may do something in or on his property that harms his neighbour (Abu Zahra, 1963, pp.50-56).

“Everybody has a right to do intentionally anything he wants in his property whether it involves water, smoke, smithery, carpentry etc., even if he produced Darar to his neighbour or his building, unless the relationship is based on lower level and upper level. Only then he is not free to do whatever he wants on his property” (Al-Taj Al-Muzahab, vol.3, pp.186-196, 197,199,202). Some of Al-Hanafiya and Al-Shafi'iyah differed over what constitutes excessive harm. (Tabyeen Al-Haqaiq, vol.4, p.196, Fathil Qadeer, vol.5, p.506, Idah Al-Qawa'id, p.28).

Al-Hanbaliya, Al-Malikiya and some of Al-Shafi'iyah claim that any conduct that may harm should be prohibited even if it was minimal and that excessive harm must be prohibited if the injury of the neighbour is more than the loss suffered by the owner, if prohibited (Ibn Qudama, 1970, vol.4, p.388, Ibn Rajab, 1962, pp.267-269, Al-Ziheli, 1985, pp.23-29). *“The point of harm's concern is what we have mentioned about smoke coming out from the oven and a toilet*

which goes through the neighbour's houses. That is a very serious injury that must be prohibited" (Tabsirat Al-Hukkam, vol.2, p.358). Ibn Ataab also says: "What I take for granted from Malik is that all major injuries must be prevented except for raising a building against air and light or whatever may be similar if was intentionally made to harm the neighbour" (Tabsirat Al-Hukkam, vol.2, p.375).

Therefore from the previous mentioned jurisprudence opinions concerning individual harm it can be deduced that:

- The harm which must be prohibited would be any conduct which results in an excessive harm, any conduct meant to harm, any harmful conduct if more harmful to the neighbour in an inconvenient way than what would be beneficial to the owner. So if the owner selected a way of using his property that would harm his neighbour he must be prevented from doing so. He is also required to use it in another way as not to harm his neighbour (Tabsirat Al-Hukkam, vol.2, pp.366-368).
- The harm has to be recognised or brought to the attention of experts. If it was excessive it would have been stopped (Ibn Qudama, 1970, vol.4, p.388, Al-Dereni, 1967, pp.502-504).
- Avoidance of mischief and blight (*Al-Mafsada*) is prioritised then obtaining benefits (*Al-Maslaha*) "universal rules preventing every harm, would prevent any benefit for man and excessive harm would result in demolishing things with no benefit at all or would prevent the procurement for essential elements of life such as light and air" (Ibn Attab, vol.5, pp.506).
- Prohibition of using rights to produce Dirar for others. It is narrated in Al-Termizi and Al-Daraqutni, that Al-Shuddery said that the Prophet ﷺ said "No Darar and no Dirar' and whoever produces Dirar will be jeopardised by Allah and whoever makes it hard for people, Allah will make it hard for him" (Ibn Rajab, 1962, pp.265, 266).

6.5.3 Darar Based on Type

Categorising harm according to its type produces two divisions: *Qadeem* (old) and *Mohdath* (recent). *Qadeem* covers an old harm that existed before the neighbours arrived, one of which they were previously unaware (this cannot be removed) or one of which the neighbours had knowledge. That which has existed for a long time may be worthy of stoppage while a more

recent one previously unknown by others falls into two divisions; existing for a long time and existing for a short time. That which existed for a long time covers two situations: worthy of stoppage or allowed to continue (See figure 6.15).

6.5.3.1 The Right of an Old Mizab (Waterspout)

Ibn Taymiya was asked about: “two houses; one to the east of the other. Entering one of them requires going under the mizab of the other and the waterspout was older than the staircase long time ago. So is it rightful to remove the mizab due to its harm on the staircase? He replied: ‘No! because it is an old (Qadeem) right’” (Ibn Taymiya, 1986, vol.3, p.7). The harm thereof was not prohibited as the situation had existed for a long time (see figure 6.16).

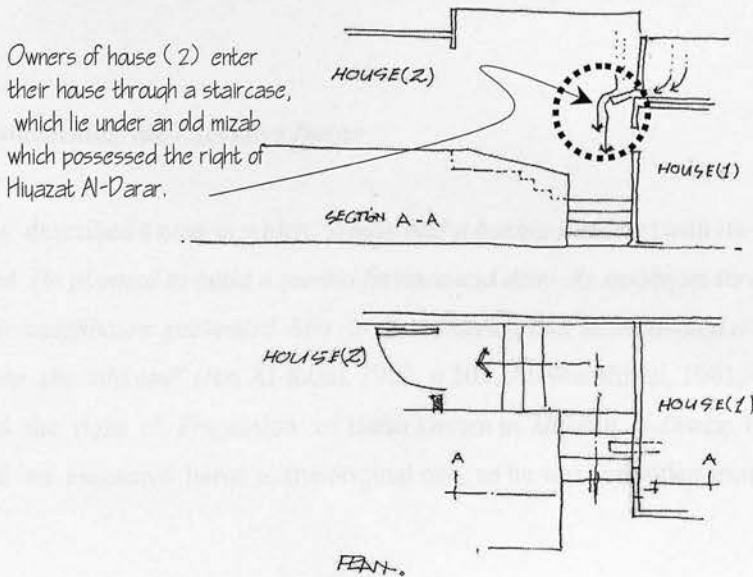


Figure 6.16 The Old Right of an Existing Waterspout (Source: the Author).

6.5.3.2 Concerning Old Olfactory Right

“Al-Zawawi was asked about some people who once had a house or a tannery shop that was Qadeem. The responsible people had forced them to leave the place and made for them a tannery out of the town. Thirty years later, the tanners came back to their town and tried to re-establish their workshops [tanneries], but the neighbours forbade them. But they said they were forced out’ Al-Zawawi replied ‘If this was proved no one can prevent them’” (Al-Wanshirisi,

1981, vol.8, p.412). So the proceeded deed possessed the harm and it could not be prohibited according to the general principle of *Hiyazat Al-Darar* (possession of harm).

6.5.3.3 Concerning Old Auditory Right

Al-Wanshirisi mentions that: “He asked Abu Baker Ibn Abd El-Rahman about some people who had some shops for breaking stones in a market on which there were some houses that could be jeopardised by the knocking action over ten years. They were prohibited and moved out of town but returned to do the same thing. He replied ‘If they jeopardised the people, removal is a must! Al-Ubidy also replied, ‘The long period is not a cause for their jeopardy and they must be removed’ (Al-Wanshirisi, 1981, vol.8, p.457). Hereby the existing old jeopardy was not allowed to continue and the removal of such a harm was left to the neighbour not the authorities.

6.5.3.4 Concerning the Excessive Darar

Ibn Al-Rami described a case in which “a man had a baking furnace (with its own chimney) in his courtyard. He planned to build a second furnace and draw its smoke up through the existing chimney. His neighbours prevented him to do so, saying that he innovated a new smoke more excessive than the old one” (Ibn Al-Rami, 1982, p 302, Al-Wanshirisi, 1981, vol.9, p.9). Here, the doer had the right of Possession of Harm known as *Hiyazat Al-Darar*, but this was not a cause to add an excessive harm to the original one, so he was forbidden from doing so by his neighbours.

From the above cases one can deduce that:

- The protest was made by those who were affected by injury, not necessarily by a close or next door neighbour.
- Prohibition of increasing the total *Darar* of the community showed great awareness of the dwellers of the traditional environment and their full knowledge of their rights and claims.
- Although some scholars prohibited the harmful deeds and informed everyone about it that it was a previous injury, others permitted its continuation because it was old.

6.6 Principle of *Hiyazat Al-Darar* (Harm Possession)

6.6.1 Introduction

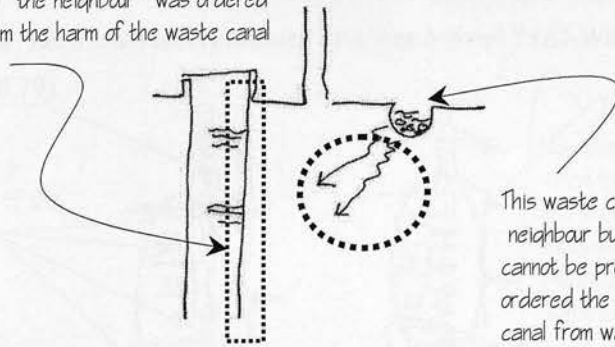
The essence of this principle is that the older deed may continue. This deed has, by its age, become a right of that building above other buildings and has nothing to do with the dwellers. Possession of Harm transfers, by transfer of ownership, to the new owner benefiting from the same right. Possession of harm therefore levies some constraints (which are well known and acknowledged earlier by the society) on vitalisation (for instance). So the rights of each building in the traditional environment vis-a-vis other buildings were clearly defined and, consequently carried out through the successive vitalisation system. Possession of harm became an important element of environmental stability.

6.6.2 Cases of Harm Possession

6.6.2.1 Darar Possession Relevant to the Qadeem Building

“There was a well beside the wall of the neighbour and, on the other side, there was a waste canal that oozed into the well. Both parties raised the case to a judge. After investigation they found that the canal was harmful to the well but it was pre-existing. The judge ordered the owner of the well to repair his well and the owner of the canal to purify it” (Ibn Al-Rami, 1982, p.375.) (see figure 6.17).

The owner of the well “the neighbour” was ordered to protect himself from the harm of the waste canal by repairing his well



This waste canal is harmful to the neighbour but since it is old and it cannot be prohibited, the judge ordered the owner to purify the canal from waste

Figure 6.17 *Darar Possession Relevant to the Qadeem Building (Source: the Author).*

In another case Sahnoon says: *“Some people lived on a cul-de-sac, upon which opened out the front doors of the dwellings and the back wall of a house of a neighbour who had no access to that cul-de-sac. This person had a toilet which was very old in the vicinity of the wall and a pipe*

of that toilet which he had not used for a long time. When he wanted to utilise it again, the other people tried to prevent him and they failed” (Al-Wanshirisi, 1981, vol.9, p.32) (see figure 6.18). It is interesting to note that the lane was owned by all neighbours, as a collective, while the possession of harm, on the individual, did not influence the possession right of an old harm, regardless of the public point of view.

Neighbours who have entrances to the cul-de-sac cannot prevent the old right of the toilet drainage pipe.

This house had no right to open his door in the lane, but possesses the right of Hiyazat Al Darar for its toilet since it was old.

The Drainage pipe.

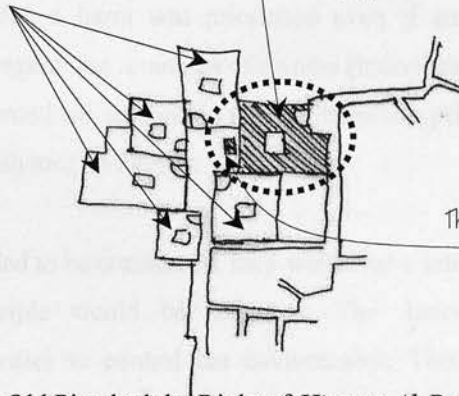


Figure 6.18 The Old Pipe had the Right of Hiyazat Al-Darar (Source: the Author).

In another case “There was a waste canal uncovered on two sides in an open road. It received all the waters of the parallel neighbouring lanes, but did not harm anybody. Due to later development, many shops, groceries and other structures were introduced. Accordingly they back-filled the canal and it became very dangerous due to the blockage of water in it. Regarding this, the scholar said: ‘If it was old, the new building should be removed and the waste canal must be uncovered and reinstated as it was before’ ” (Al-Wanshirisi, 1981, vol.9, p.61-62) (see figure 6.19).

The old waste canal which received all the waters of the parallel neighbours

New shops which back filled the waste canal and blocked it. Since these shops were new they were removed and the waste canal continued.

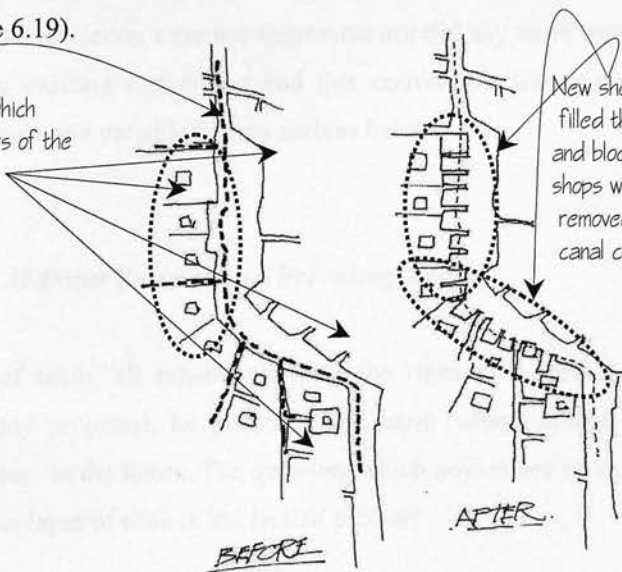


Figure 6.19 The Canal had the Right of Hiyazat Al-Darar (Source: the Author).

In this case where the canal came under group ownership and the street under public ownership, the canal possessed harm by the rule of *Hiyazat Al-Darar* and continued and every new (*Mohdath*) building was demolished.

6.6.2.2 Results

- The building possessing a harm was prioritised even if an individual owned it and, the jurisdiction did not regard the numbers of owners (individuals, special groups, the general public) but it represented all according to the vitalisation principle (*Ihya'a*) and preceding Possession of Harm (*Hiyazat Al-Darar*).
- If the majority needed to be considered, they would have intruded upon the status quo and the vitalisation principle would be impaired. The latter situation would necessitate intervention of authorities to control the environment. This interference would result in a waste of time and a waste of manpower. The avoidance of this intrusion reinforces environmental stability and saves the efforts and money of Muslims.
- The majority of dwellers in the traditional environment knew the principle of Possession of Harm very well and what would be a violation of it. The doer would have been considered an oppressive person in utilising the right. Its proper use shaped the environment by the accumulated decisions of the inhabitants and this obliged newer generations to respect the previous decisions and consider their constraints. They also understood that those who started earlier by vitalisation were not aggressive nor did any harm towards their neighbours, but followed an existing convention and this convention was a result of the interaction between the climate and variable factors such as habits.

6.6.3 *Hiyazat Al-Darar* Relevant to a Preceding Action

Based on Hadith of harm, all inhabitants have the right to do whatever they wish in their properties. If nobody protested, he possesses the harm which, in turn, constrains the others' behaviour or choices in the future. The question, which now arises is: would the Possession of Harm result from the lapse of time or the lack of protest?

6.6.3.1 The Lapse of Time

Opinions of scholars differ on this point. Some determine the possession to be after ten years for the Prophet's ﷺ Hadith, *"Whoever possessed something against his opponent, it is his"* (Ibn Al-Rami, 1982, p.339). Others said: *"If events were investigated independently, as Malik did, there is no set timing or period"* (Al-Wanshirisi, 1981, vol.9, pp.42, 46, 47, see also Ibn Al-Rami, 1982, 339, 342).

"The back of a house led to a zokaq [cul-de-sac] and the owner of the house opened a door to that zokaq and it remained open for three years until the owners of the houses in that zokaq sold their houses to a new owner who wanted the owner of the door to close it, alleging that this was the right of previous owners and that he had now replaced them. Ibn Attab answered that it was not up to the new owner but to the previous owners to protest and since they did not do so and sold the houses without protesting, they were satisfied with such a door. The right of the new owner to prevent such a harm was no longer valid" (Al-Wanshirisi, 1981, vol9, pp.31, 32).

6.6.3.2 Lack of Protest

A person who earned the possession by this means considered the lack of protest as a basis for Possession of Harm. *"If the neighbour saw his neighbour doing any harm that would affect him and did not protest until it was completed, he had no right to object, because his silence indicated satisfaction. He has no right because his being silent is proof that he was contented"* (Ibn Al-Rami, 1982, pp.339-342). *"Whoever makes a claim against a new building in the vicinity of his, which would harm him but about which he had not spoken, he should swear that his silence was not a matter of approval or satisfaction and thus the harm will be removed from him"* (Ibn Al-Rami, 1982, p.341. For more cases review Al-Wanshirisi, 1981, pp.42-47).

Thus, in the case of harmful effects such as the smell of tanneries and dust from baking ovens and furnaces, the majority of scholars agree that it should not continue (unless it existed before the neighbour's building, which gives the right of *Hiyazat Al-Darar*).

6.6.4 The Harm Resulting From a Change of Use

“A narrow lane had houses with three doors. One owner built a large hotel, then the second one built another, smaller hotel. The distance between the two hotels and the third house was three arms [1.5 m]. There were no hotels in this town except for these two hotels and therefore the number of passers-by increased. Consequently nobody dwelt in the third house. Is it the right of the owner of the house to prevent the other two hotels owners from their produced harm? The judgement was that it is his right to prevent his two neighbours from their harm!” (Al-Wanshirisi, 1981, vol.9, pp.41-42).

As the author previously mentioned the jurists differed in their judgements regarding the harm deed according to the time of *Hiyazat Al-Darar* and gave different time ranges between four to twenty years. Malik was not relying on the time of *Hiyazat Al-Darar* but on the measurement of the intensity of the harm itself. Afterwards, he gave his opinion.

Here we could conclude that the differences between the jurists' notions of time lapse were because the conventions differed from one region to another and because of the multiple kinds of *Darar*, which will generate different intensities of harm (i.e. the *Darar* of the tannery, or drainage grill etc.).

As regards the lack of protest on harm caused by opening doors on the first floor, which could spy into the neighbour's private areas. Ibn Sireen says: *“It is not the right of anybody to have the right of Hiyazat Al-Darar by opening a window or door, building cantilevers, installing a drainage grill, digging a waste channel or having a thoroughfare pass through his neighbour's land, even if his neighbour does not protest for years”*. But the scholars said that this should not exceed 10 years because it is not feasible that a person would bear the harm from the neighbour for such a long time just for good neighbour relations.

Here we can deduce that *Shari'a* urges inhabitants to act quickly and protect their rights which means that they must always be vigilant. If they are not, some of these rights could be turned over to other residents under *Hiyazat Al-Darar*.

The continuation of the harm deeds correlates with the protest of the injured person or group and is not related to the permission of the authority. This means that the principle of *Hiyazat Al-Darar* contributed to an environment in which all of the planning decisions were in the hands of the inhabitants. These inhabitants were aware of the rights pertaining to theirs and others' properties, so they moved to defend these rights.

The differences between the jurists in the lapse of time for *Hiyazat Al-Darar* led to a dialogue between the inhabitants and finally led to a decision on the appropriate time for seizing *Darar* according to the customs of each region (the *Darar* of a drainage grill in a rainy area is not equivalent to that in an arid area, thus the time of *Hiyazat Al-Darar* should be different), the nature of each person involved and finally according to the nature of the produced harm.

6.7 *Al-Ihtiyal fi Hiyazat Al-Darar* (Stratagem of Harm Possession)

There are two examples in this illustration pertaining to the traditional environment. If a person produced a *Darar* such as building a quern which could harm his neighbours and then built a wall (inside his house) which prevented that harm, then the harm could continue and he would possess the harm. That type of stratagem is known as *Al-Ihtiyal fi Hiyazat Al-Darar*. Alternatively, if one of the inhabitants opened a door or a window which would harm one of his neighbours then he would have to close it to mitigate the harm. Some years later he could reopen the door, making claims that the door was *Qadeem*. Therefore he has the *Hiyazat Al-Darar*.

When Ibn Abd Al-Rafi the judge was asked about the smoke of public baths, the baking ovens and the smell of the tanneries, he said: “*Their owners must remove them or make a strategy to prevent their harm from reaching their neighbours*” (Ibn Al-Rami, 1982, p.300-302). This indicates that the doer of the harm can continue so long as a strategy (*Heelah*) prevents the harm from reaching the neighbours. So the jurists agree upon on the permissibility of the potentially harming deed if the doer can contain it. This depends on two things; the cleverness of the doer to minimise the harm and the technology of the society. The next few examples illustrate some types of harm for which their doers succeeded in finding a stratagem to prevent them from harming their neighbour (s).

6.7.1 *Al-Tahayul on the Darar Caused by Toilets*

Al-Razi says: “*The harm from toilets could be guarded against because this harm is carried by moisture and this could be prevented by building a wall between the owner and his neighbour, thus this harm would continue*” (Ibn Abdeen, 1966, vol.5, p.448).

6.7.2 *Al-Tahayul* on the *Darar* Caused by a Quern

Ibn Al-Rami says: “ *Ibn Al-Ghammaz* was asked about a man wanting to build a quern in his house. How far would the quern need to be from his neighbour's wall? He [Ibn Al-Ghammaz] replied that: ‘there is no limit for the distance. This relies on the convention in such cases’ and then Ibn Al-Rami added: ‘whomsoever wished to build a quern in his property must place it 8 shiper [2 meters] minimum away from the neighbour's wall, this distance being to the outer boundary of the animal turning the quern. Further he must occupy this space with a building [storage or any other type of construction]. Thus the harm will be kept away from the neighbour” (Ibn Al-Rami, 1982, p.305) (see figure 6.20)

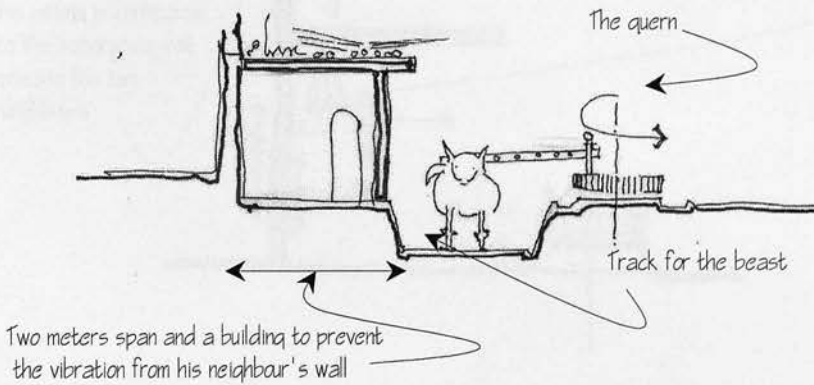


Figure 6.20 *Al-Tahayul* on *Al-Darar* of the Quern and the Continuity of *Al-Darar*
(Source: the Author).

6.7.3 Evaluation of *Al-Darar* Intensity

Concerning the evaluation of the harm Ibn Al-Rami says: “A man built a quern in his house, then his neighbour complained that the vibration of the quern was shaking his wall. To make certain of the vibration and to delimit the harm, the judge told Ibn Al-Rami to take a sheet of *Kaghid* [a piece of paper] and tie its four edges with four threads and then collect the four threads and hang them on the ceiling above the separating wall between the two neighbours. He then requested that a seed of coriander be put on the *Kaghid* and asked the owner of the quern to put it to work. If the coriander seed vibrated and moved on the top of the paper then it harmed the wall of the neighbour and the quern would have to be taken away. If the coriander seeds did not move or vibrate then the quern could remain because it had no effect on the neighbour's wall” (Ibn Al-Rami, 1982, p.305, 306) (see figure 6.21).

Ibn Al-Rami adds on page 307 that: “If the wall separating the two neighbours was owned by the man who owned the quern and the revolving of the quern caused the vibration, does this prevent him from using his quern or not? The judge said: ‘If the walls of the neighbours were not shaking while the revolving of the quern then he will not be prevented since it is his walls that shakes and not the wall of the neighbour’ ” (for more cases see Al-Wanshirisi, 1981, vol.9, pp.7, 10).

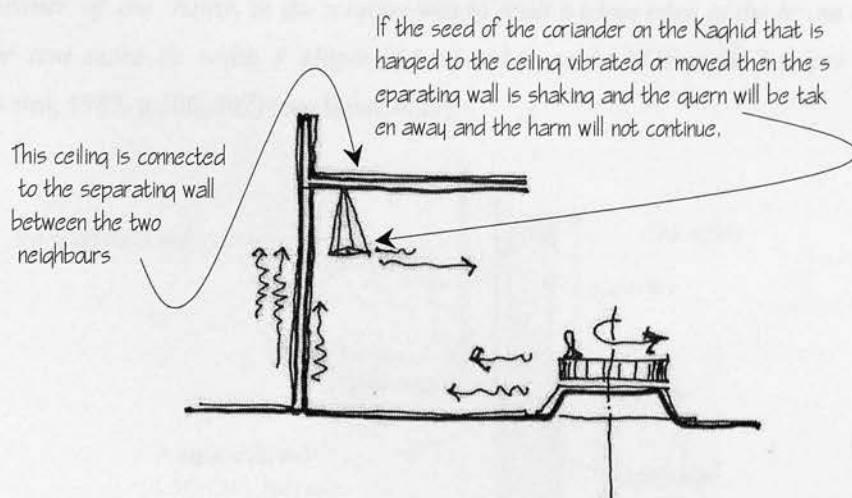


Figure 6.21 Measuring the Intensity of Harm of Vibration in the Traditional Environment (Source: the Author).

6.7.4 Al-Tahayul on the Darar Caused by a Stable

“A man built a stable behind one of his neighbour’s ground floor rooms. The neighbour protested against the harm of the stable and qualified people were asked to visit the site. After their visit they said that the stable was newly built and that it was harming the neighbour. Thus the judge ordered it to be removed and, according to the judgement, the sumpter animal [mule] had to be removed. Therefore, the owner was depressed and complained to the judge: ‘I depend upon this animal and have no other way to earn my living’. The building solution to prevent the harm from his neighbour was to dig a foundation the height of a man into the ground and over this foundation to build a wall 5 shiper [1.25 meters] from the ground up, and 2 shiper [500 mm] wide. The space between this wall and the wall of his neighbour would be half a shiper

and there should be 5-shiper [1.25m] from earth up to the ceiling. When the owner of the stable did so the harm for his neighbour was reduced” (Al-Wanshirisi, vol.9, p.8) (see figure 6.22).

“A similar case happened to a man who had a waste land and wanted to build a stable, but his neighbour forbade him from that, so the case was taken to the judge. The judge asked qualified people to examine the situation and report on the case. They found that the place in question was large and a street was to the west and north and a house to the east along with a stable for another neighbour. The owner of the existing building had been permitted to build a stable but not the owner of the house, so the solution was to erect a room edge of the house of the other neighbour and make its width 9 shiper [4.5 m] and the width of its walls 2 shiper [500 mm]” (Ibn Al-Rami, 1982, p.306, 307) (see figure 6.23).

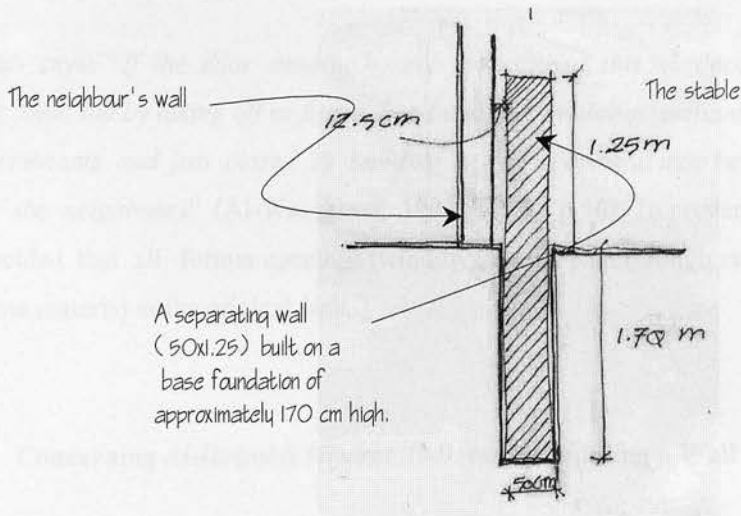


Figure 6.22 *Al-Tahayul* on the Harm Caused by the Stable on the First Case (Source: the Author).

The constructional solution was to build a room 4.5 m wide and 50 cm thickness for the separating wall.

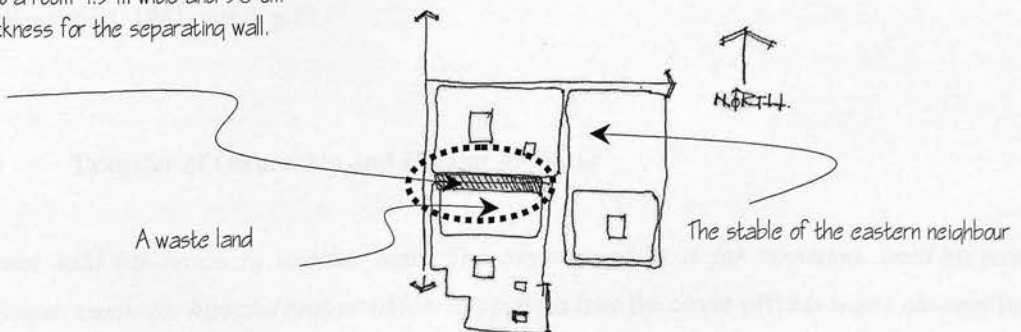


Figure 6.23 *Al-Tahayul* on the Harm Caused by the Stable in the Second Case (Source: the Author).

6.7.5 Concerning the *Darar* Resulted from Opening a Window and its Continuation

Ibn Al-Rami mentions that: *“There was a closed window in a cul-de-sac for a long time then the owner of the house with the window opened it. The neighbours found that this window exposed their houses’ roofs and asked him to close it again. The owner of the window brought witnesses and pointed as evidence the old traces of the window like the lintel and threshold; and thus he was awarded the right of the old harm and the window remained open”* (Ibn Al-Rami, 1981, p.316).

6.7.6 Concerning *Al-Ihtiyal fi Hiyazat Al-Darar* in Opening a Door

Ibn Zaraab says: *“If the door causing harm is to be closed, this must not be closed by merely nailing it shut, but by taking off its frame, lintel and all remaining remnants, because if it is left with its remnants and just closed by building a wall of brick, it may be the source of a later harm for the neighbours”* (Al-Wanshirisi, 1981, vol.9, p.56). To prevent this happening, the jurists decided that all former openings (windows, doors, path through etc.) had to be blocked by the same material as the original wall.

6.7.7 Concerning *Al-Ihtiyal fi Hiyazat Al-Darar* by Building a Wall

“A man brought a pack animal to his house. The neighbour protested the harm of a pack animal being in the house so the owner built a wall to protect his neighbour from any possible harm. The neighbour then complained against the owner, fearing that after some time he would remove that wall and make an undue claim that he owned the right to keep the animal’s stall” (Al-Wanshirisi, 1981, vol.9, p.8).

6.7.8 Transfer of Ownership and *Hiyazat Al-Darar*

“A man sold his house to another man. The buyer lived in it for sometime until his rear neighbour came to him and requested him to open [to take the cover off] his waste channel [to clear it out], which passed from the former to the new owner’s house. The new owner said he did not know when he bought the house that there was a channel in his house and prevented him. They raised it to the judge who decreed that: ‘The rear house owner was given the right to

open and clear out his channel and thus the new owner was given the choice, either to accept buying the house with the channel or complain to the vendor' and it was given back to the vendor. The buyer was given his money back" (Ibn Al-Rami, 1982, p.382) (see figure 6.24).

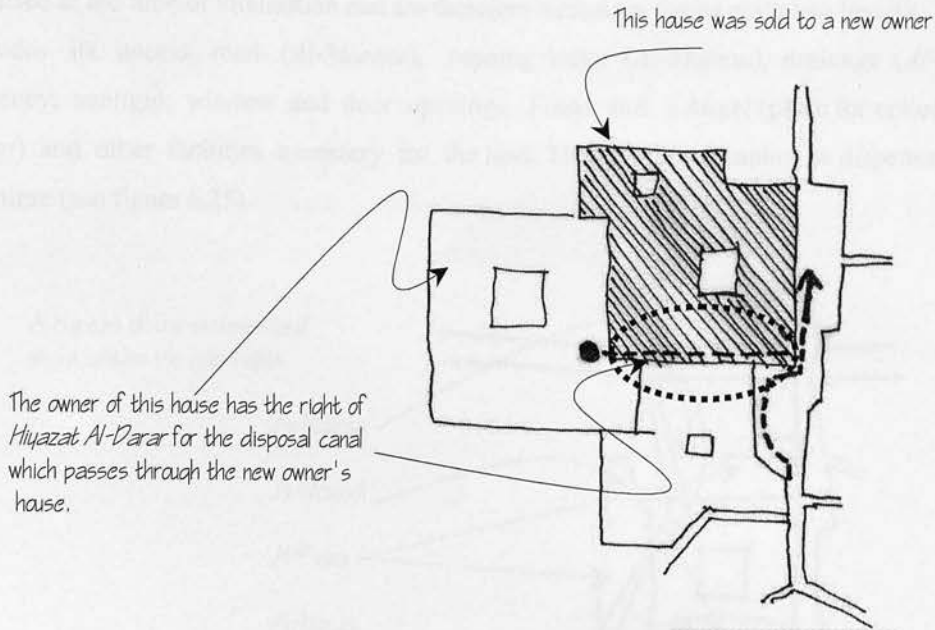


Figure 6.24 Transfer of Ownership and Hiyazat Al-Darar (Source: the Author).

6.7.9 The Increase of Harm due to Hiyazat Al-Darar

"A man bought a house and the seller informed him that his neighbour had the right of rain drainage from his roof. The buyer prevented his neighbour from using the spout because he was making ablution and wished to discharge the ablution water into the drainage system. They referred the case to judge who decreed that the new owner had the right to prevent his neighbour from such action. The reason for that was that rain water do not flow all the time like the ablution water and even he had Hiyazat Al-Darar he has no right to increase the harm" (Al-Wanshirisi, 1981, vol6, p.439).

And also it was mentioned that Ibn Al-Haaj was asked about a cul-de-sac in which "A man owned a door [onto the cul-de-sac] and the man blocked the door for some time. He then gave the house to his daughter as a gift. The new owner [the daughter] later on wanted to open that door and the question was: is this is her right or not? Reopening the door, having been permissible for the donor, consequently passed to the daughter, unless the donor had closed the door and erased every sign of it. (Al-Wanshirisi, 1981, vol.9, p.20).

6.8 *Al-Hareem and Hiyazat Al-Darar*

As clarified earlier, *Al-Hareem* covers all the essential facilities with which the land was vitalised at the time of vitalisation and are therefore necessary for its complete benefit. This then includes its access road (*Al-Moroor*), running water (*Al-Majraa*), drainage (*Al-Maseel*), chimney, sunlight, window and door openings, *Finaa* and a *Majel* (place for collecting rain water) and other facilities necessary for the land. These facilities cannot be dispensed with at any time (see figure 6.25).

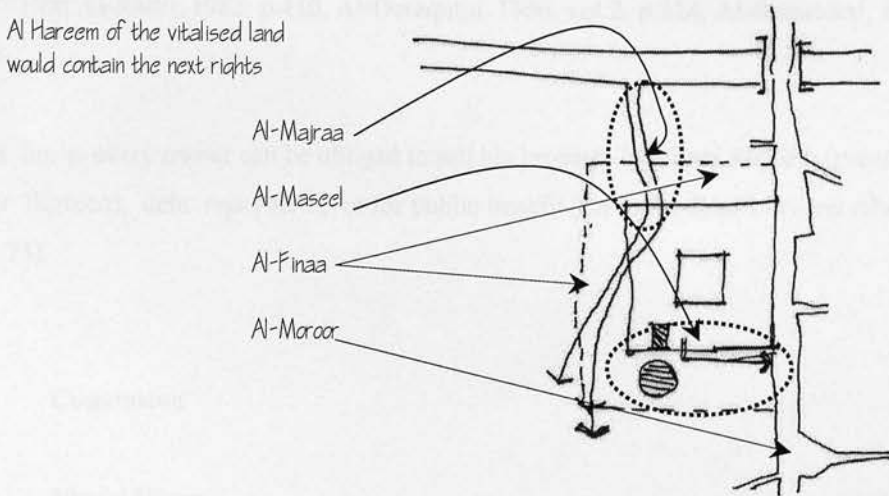


Figure 6.25 *Al-Hareem and Hiyazat Al-Darar* (Source: the Author).

If the vitaliser opened a window or a door or established an oven or a shop for a tannery, he would possess the harm by being the first to build. If a later owner did harm towards his neighbours, his neighbours would have the right to prevent him, because this would be considered as *Ta'addi* and would be stopped. But if the neighbour (s) did not make a claim and a certain period of time elapsed, under *Hiyazat Al-Darar* the harm would continue.

Concerning *Al-Hareem* there are some important points which are revealed in the literature: The extent of vitalised land could never be reduced by any means, whether by oppression or confiscation. Taking a piece of land from the neighbour by changing its boundaries is unlawful. As it was narrated, Prophet Mohammed ﷺ “*cursed whoever changes [steals from his neighbour by moving the boundary markers] the Manar [confinement] of the land*” (Yahya Ibn Adam, 1964, p.96).

Shari'a clarified the limits of behaviour allowed for higher and lower dwellers in the neighbourhood. This developed into building conventions that determined their responsibilities in regarding to walls, water running etc. For example, some lower floors dwellers might build a toilet that may harm the walls and weaken the building. Thus the neighbour on the upper floor has the right to prevent them and request its removal (for more details see Al-Wanshirisi, 1981, vol.8, p.440).

It is not allowable to confiscate any property even if such an act is supported by the majority due to the saying of the Prophet ﷺ “*It is not lawful to take any Muslim's property unless by his desire*” (Ibn Al-Rami, 1982, p.410, Al-Daraqutni, 1966, vol.2, p.214, Al-Shawkani, 1986, vol.5, p.316).

Within limits every owner can be obliged to sell his property by either *Shafa'a* (preemption, see chapter thirteen), debt repayment, or for public benefit (for more details review Ahmed, 1935, pp.72, 73).

6.9 Conclusion

6.9.1 Visual Harm

In contrast to auditory and olfactory harm, visual harm depends upon the conduct of human beings. Anyone whose house is higher than his neighbour's house is required to build a screen wall to avoid spying on his neighbour and this is enforced by the individuals and community involved.

6.9.2 Olfactory Harm

This type of harm covers deeds, which result in a noxious smell, for example the smell from tanneries, toilets, uncovered canals etc. that are in the vicinity of the neighbour. There must be some means effective to prevent these smells. As for the smoke from baking or cooking, this is a necessary item that nobody can avoid and is therefore forgivable. Also nobody can do any harm without the permission of neighbours.

6.9.3 Auditory Harm

This does not merit consideration regarding the hearing harm such as the noise of the Mills, Forges, querns and carpentry.

6.9.4 *Al-Tahayul on Al-Darar*

The previous examples show the spread of the principle of 'strategies of harm prevention' in the traditional environment and demonstrate that the measurement of the harm was one of the basic concepts which governed permissibility of harmful deeds in traditional Islamic Cities. The environment followed the principle of the sound harm measurement especially in regards to the vibrations caused by querns and mills.

There were some types of harm which could not be allowed to continue because their owners were unable to develop a stratagem that would diminish the harm. Examples include the harm of the well dug beside a *Majel* (a place in which the rain water is collected) caused by the leakage of the *Majel* water to the well (Al-Wanshirisi, vol.8, p.430, Ibn Al-Rami, 1982, p.409); the harm of tree roots which break the sides of a *Majel* or the foundation of the neighbour's walls that cannot be avoided by cutting its roots (Ibn Al-Rami, 1982, pp.461,462); the harm of a newly produced drainage pipe for which no remedial stratagem can be made (Al-Wanshirisi, 1981, vol.8, p.431); the harm of smell which harms the neighbour and also the wall as well as in the case of a man who produced vinegar in his house and whose neighbours protested that the smell saturated the walls, in which case the harm was forbidden or allowed to continue on the proviso that a wall be built to prevent the smell from reaching the shared wall (Al-Wanshirisi, 1981, vol. 8, p.412).

6.9.5 The Effect of the Harm Principle on the Built Environment

- By all Doctrines it was agreed that the owner is free in his building unless he harms his neighbour. Thus, toilets were placed far from the shared walls, openings opposite each other were avoided and parapets were built around roofs to avoid seeing the neighbours interiors.
- The convention utilised in the traditional environment worked to remove any innovative work that was considered harmful and could cause complaints.

- *Shari'a* gives the right to the neighbours to retaliate against his neighbour to defend himself, thus every one can avoid doing harm towards his neighbour. Because of this conventions were developed.
- Minimal harm was sometimes allowed to continue due to reasons like: finding a compromise in order to enjoy a better neighbourhood; the free utilisation of property; or the employment of a suitable solution to avoid harmful deeds by *Al-Ihtiyal Ala Al-Darar* (preventing the effects of the harm by any means). *Al-Tahayul* (stratagems to avoid harm) depended upon the cunning of the harm doer and the technological capability of the society in general.
- In the traditional environment there were types of harm that could not be avoided like the harm of smell and the harm of rain drainage through grills and spouts. Harm from the *Majel* (a place in which the rain was collected) a feature found in the traditional environment that could not be avoided. Some harms could be avoided like the harassment of mills, stables and vibrations.
- Having the ability to harm increased a person's range of control and power since he could continue as before, without disturbing his neighbour.
- The traditional environment, therefore, consists of a number of tightly clustered attached houses with a highly structured inter relationship controlled by environmental agreements in lieu of rules imposed by authorities or external power or authority. This stability increased over the course of time on the acceptance of the existing objectives regarding priorities and the age of existing features.
- Review of events shows that all parties are aware of their rights and duties and this sets the parameters and motives for environmental affairs like possession of harm is a right of the building not the dweller and, the older deed has the right of possession of harm. The newer has to deal with harm as a constraint and that the building possessing harm may continue its harm irrespective of other properties and people.
- The older building has every right to remain even though it is (apparently) harmful to the public benefit. This was dictated by vitalisation principles. A preference of the recent benefit over the old situation calls into question the vitalisation principle and gives people the chance to do what ever they like without hindrance.

- Therefore new comers need to deal with and adapt to previous inhabitants and their accumulated constraints. In doing so, they reinvigorate conventions that result in an atmosphere of changeable factors.
- Possession of Harm relates to previous deeds not the previous building. Yet possession of harm has a direct bearing on harmful deeds. The Hadith of the Messenger ﷺ “*whoever possessed something harmful against his opponent for ten years, it will be his own*”. Thus, harm prevails if it is not protested for about for ten years; although this period relies on conventions and the kind of harm involved.
- If the neighbour has made no protest against any harmful building or deeds, his silence means tacit acceptance and he forfeits his right to complain. Harm that increases over the course of time will not be allowed to continue unless it was established before building of the neighbour.
- All what was exhibited hereby of freedom, Possession of Harm, harm, evaluation of rights interpretation of harm, trials of harm arrangements of constraints, did not result in a formalised ‘disciplined’ environment such as our contemporary one, but it resulted in an environment of a unique properties full of environmental conscience and consequently a stable one. **On the contrary the contemporary environment is orderly but not stable because the human relationships within it are formed by the authorities and not by the local communities.**

CHAPTER SEVEN

Right of *Al-Irtifaq*

7.1 Introduction

This chapter concentrates on the right of *Al-Irtifaq*. It is divided into four parts. The first part deals with its establishment, meaning and definition and the main differences between it and other types of rights which formed the traditional environment. From the other side, the concept of *Al-Irtifaq* demanding the rights of owners has not been mentioned in any Islamic source. Hence, we will study its main features of its nature, its characteristics, its main principles and then the right of *Al-Irtifaq* which others have mentioned in their books of Islamic law. In the second part, we will study others properties by using them as a basis to put through its main features and characteristics for more good purposes. The last part of the chapter speaks about the concept of *Al-Irtifaq* and its types. In this part, we will study its establishment and its types of *Al-Irtifaq* and maintenance of them, the right of *Al-Irtifaq* and the right of *Al-Irtifaq*.

7.2 Establishment of the Right of *Al-Irtifaq*

As previously explained in this book, the right of ownership is established specifically by giving things through *Qiyas* and *Ullah*.

- Giving and receiving things through *Qiyas* and *Ullah*.
- Assigning other established rights to known as *Al-Irtifaq*.
- Acquisition by virtue of *Al-Irtifaq* which is known as *Al-Irtifaq* and rights of *Al-Irtifaq*.



Figure 1.1 - Types of Land Ownership in Islam (Source: Author's Own)

CHAPTER SEVEN

Right of *Al-Irtifaqh***7.0 Introduction**

This chapter concentrates on the right of *Al-Irtifaqh*. It is divided into four parts. The first centres on its establishment, meaning and definition and the main differences between it and other types of rights which formed the traditional environment. Then the author explores the concept of *Al-Irtifaqh* concerning the points of contact between neighbours and covers some important issues related to many features of the traditional environment. The third part delves deeply into the right of *Al-Istitraqh* which covers the various aspects of ducting ones drinking water through others properties or using them as access to pass through or even to make maintenance for ones own property. The last part of the chapter speaks about the concept of other rights related to *Al-Irtifaqh* and examines two of them, the right of *Al-Majraa* and the right of *Al-Maseel*.

7.1 Establishment of the Right of *Al-Irtifaqh*

As previously indicated in Part Two, the land ownership (*Al-Milkiya*) could traditionally be gained through three methods:

- Seizing and establishment which is known as *Al-Ithbat*;
- Assigning after establishment which is known as *Al-Naql*;
- Retention by virtue of inheritance which is known as *Al-Ibqah* (see figure 7.1).

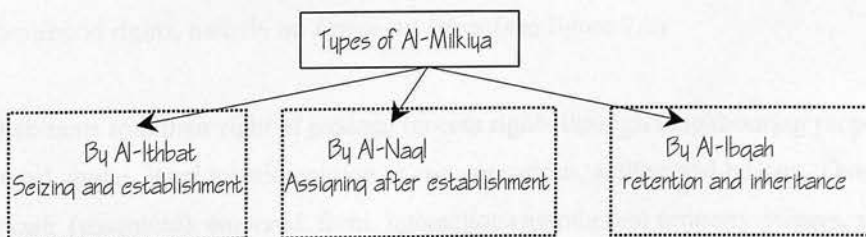


Figure 7.1 Types of Land Ownership in Islam (Source: the Author).

These different methods of ownership influenced the traditional environment as regard generating its *Al-Irtifaqh* principle. In the act of processing any piece of land by *Ihya'a*, this land will have its own and private *Hareem* (this includes any road leading to it plus the outside court and other types of facilities) and a water course which is known as *Al-Maseel* (see figure 7.2).

This obliges others coming later to vitalise neighbouring lands to respect the road and watercourse of the earlier land. By frequent *Ihya'a* processes, most properties of the traditional environment (that is, houses) in the Islamic world become joined. Once all properties are constructed, the resultant built environment becomes constructed as a close-knit unit. Individuals of the said environment then start to divide their properties either by assignment, as in selling, gift, charity or mortmain etc., or by retention through inheritance. These houses were divided until some parts had no access way to the public street *Tareeqh Al-Muslimeen* (literally Muslims' road) except through others' properties. For instance, if a house became divided by inheritance, some of its inhabitants might have to pass through another part of the same house to reach *Tareeqh Al-Muslimeen* (see figure 7.3).

This need led to the formulation of a system to allow inhabitants to pass through properties belonging to others. This system was called right of *Al-Moroor* or *Al-Istitraqh* and is one of *Al-Irtifaqh* rights derived from *Shari'a*. Other needs that require passage through other properties are also accounted for as follows:

- Right of *Al-Majraa* (flowing water): which allows drinking water to be piped through an adjoining property.
- Right of *Al-Maseel* (gully): which allows excessive water of rain to be discharged through a neighbour's property.
- Right of *Al-Ta'ali* (elevation): This right of *ownership of levels* as seen in increasing the height of a building for many reasons. This right is governed by the public origin of neighbourhood rights, namely *no Darar no Dirar* (see figure 7.2)

Some inhabitants sold their right of passage (access rights through neighbouring property). This is recognised under legal juristic opinion as compensations, selling and buying. Thus, the right of *Al-Irtifaqh* (easement) emerged from interactions among real property owners, which have basically resulted from proximity of development by *Ihya'a*, division of property either by assignment or by inheritance or selling and buying between neighbours. Therefore *development, division and compensations* are the three reasons for interactions.(see figure 7.4).

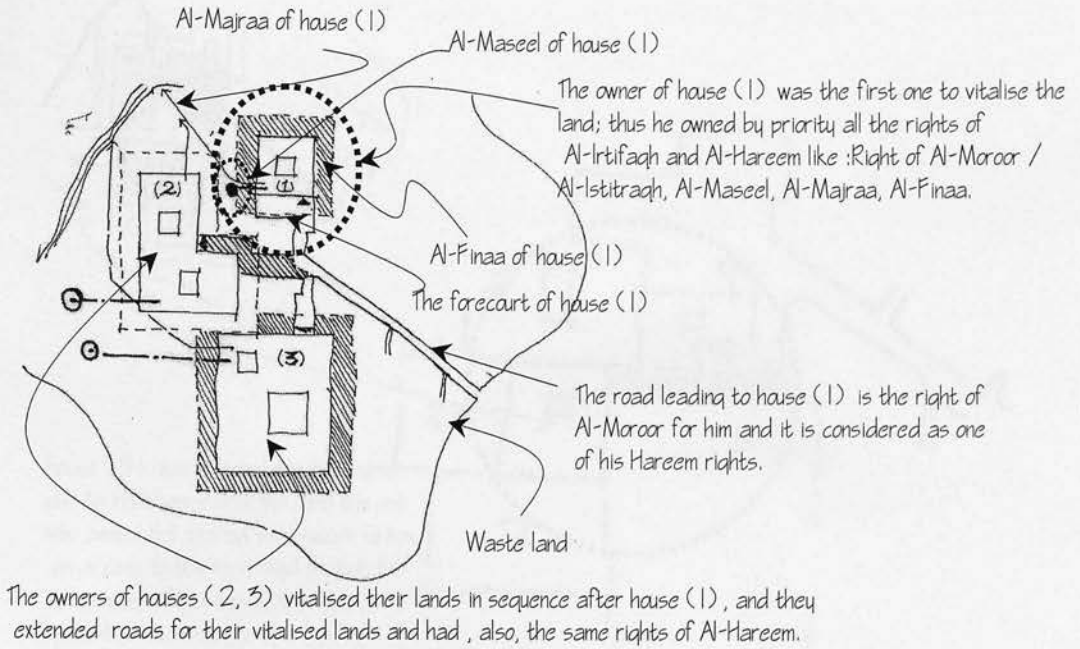


Figure 7.2 *Ihya'a* and its Continuity Represented a Progressive Factor in Land Development (Source: the Author).

By frequent *Ihya'a* most properties of the traditional environment became adjoined and in this case house (4) and (5) take the permission from their neighbours to build on their external Finaa. Consequently rights of Al Majraa and Al-Maseel will continue as rights of both houses (1) and (3) on houses (4) and (5).

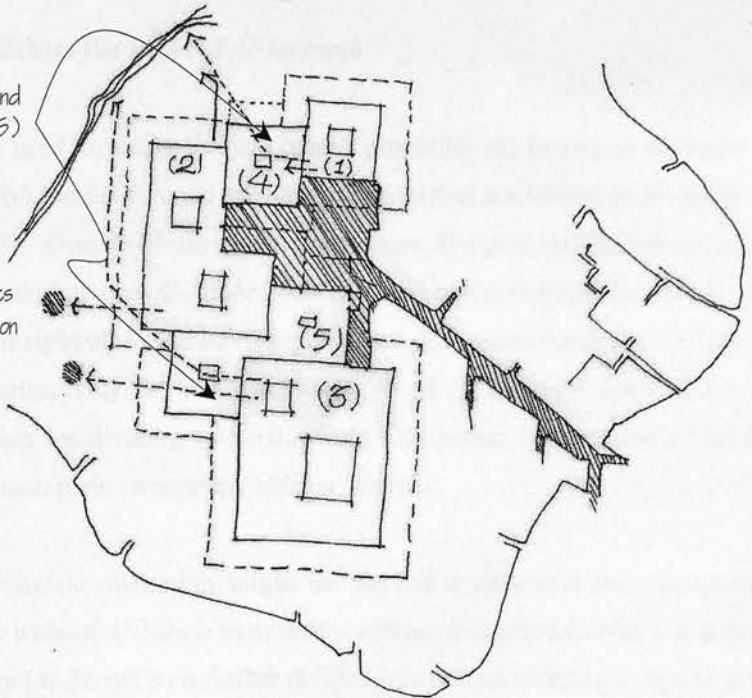


Figure 7.3 The Way the Rights of *Al-Irtifaqh* Merged in the Traditional Environment (Source: the Author).

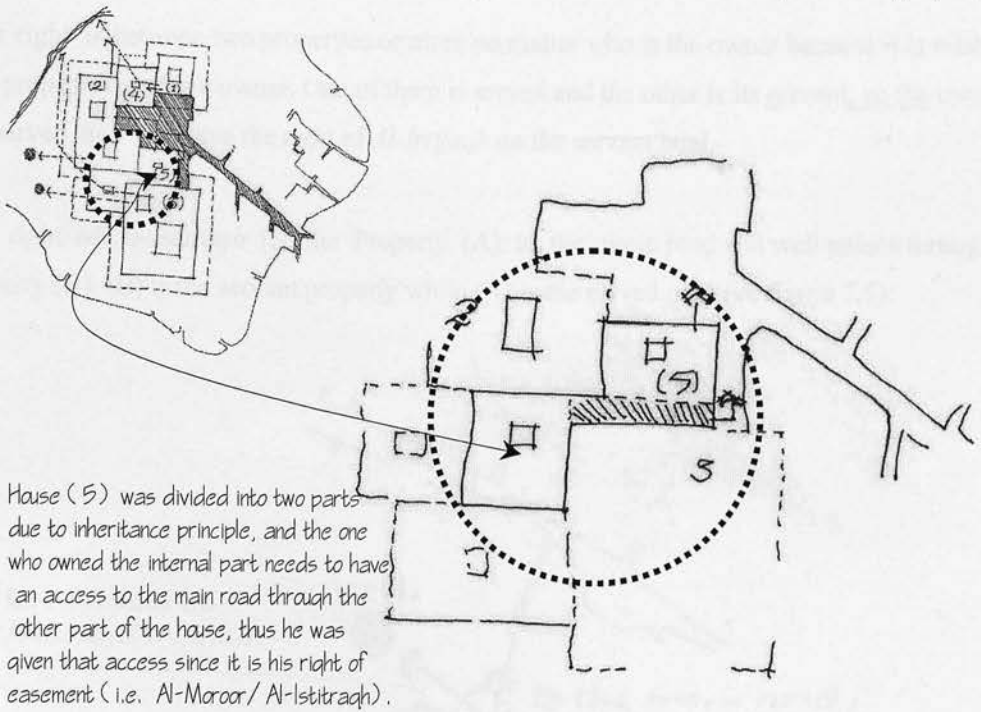


Figure 7.4 Development, Division and Compensations are the Three Reasons for Interactions (Source: the Author).

7.1.1 Refusing to Give Others the Right of *Al-Istitaqah*

Internal properties which need to access through others' properties are known as *Al-Aqahr Al-Makhdoom* (served property) and the external surrounding properties are known as *Al-Aqahr Al-Khadem* (servant property). Owners of surrounding properties *Al-Aqahr Al-Khadem* can refuse to let inhabitants of internal properties *Al-Aqahr Al-Makhdoom* access through their lands, thus refusing to offer them the right of *Al-Moroor*. They can also deny them the right of *Al-Maseel* and *Al-Majraa* which collectively are known as Right of *Al-Istitaqah*. *Shari'a* thereby accommodates this situation by dividing ownership into two parts: 1) complete ownership (*Milkiya Kamila*) and, 2) incomplete ownership (*Milkiya Naqisa*).

As explained before, incomplete ownership might be applied in situations where property is without utility (*Al-Raqaba* without *Al-Manfa'a*) or utility without property (*Al-Manfa'a* without *Al-Raqaba*), or where utility (*Al-Manfa'a*) is further divided into private (relating to the person's use) and realty (relating to the property, the right of *Al-Irtifaqh*). This latter right is imposed by *Shari'a* so that a neighbour will be obliged to serve property, to the benefit of the served real property (Ahmed, 1935, p.34) (see figure 7.3, 7.4).

This right is between two properties or more no matter who is the owner because it is related to the property not to the owner. One of them is served and the other is its servant, so the owner of the served land will have the right of *Al-Irtifaqh* on the servant land.

The right of *Al-Istitaqah* for the Property (A) to the main road and well passes through the property (B). (B) is the servant property while (A) is the served one (see figure 7.5).

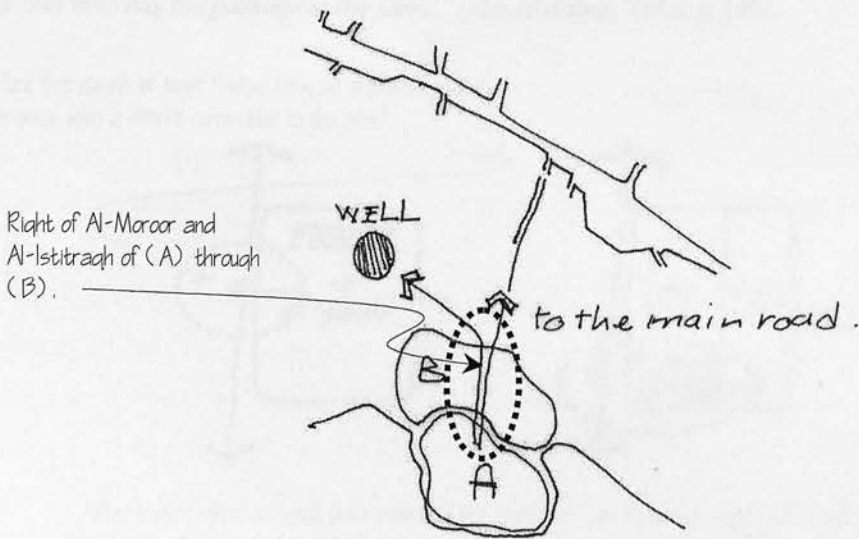


Figure 7.5 The Concept of the Right of *Al-Irtifaqh* (Source: the Author).

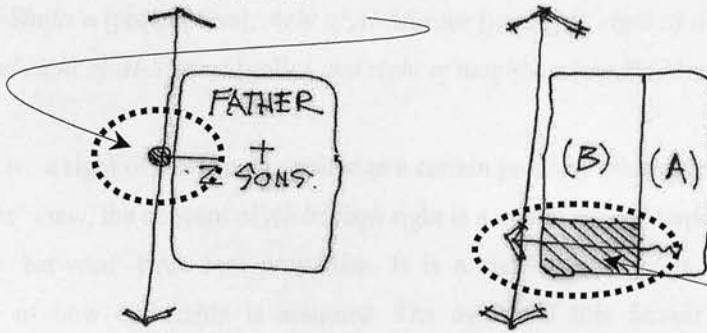
Abu Al-Abass Ahmed Ibn Yahya Al-Wanshirisi said: “*The Malki jurist Ibraheem Ibn Abdullah Al-Yeznasni was asked about: two brothers who shared a land inherited from their father. As the land had an old road attached to, the road was included in the share of one of them while the other share had no access except through his brother’s share attached to the road. Upon division, it was not indicated whether one brother could go through his brother’s share or was forbidden to do that. The owner of the share which had no entry found that his brother denied him access to the road. Thus, would the existing division hold true and forbid one man the right to access his land through his brother’s share or would his need of access require that the division be reformulated? Al-Yeznasni answered, ‘He is entitled of the brother’s road until an alternative division is provided’*” (Al-Wanshirisi, 1981, vol.5, pp.143. 144).

In an other case; “*He who had the road in his share could choose to let its user pass and keep shares as they were, but if he refused, then the division would be cancelled and a fresh division*

made so that access could be granted to the one who owned the road and his share would be increased for that" (Ibn Rajab, 1933, p.189) (see figure 7.6).

Another case regards a man whose land lies between other people's who enclosed their land, thus blocking his way to his land. Malik was asked, "the one who has a passage through a farm to a possession beyond this farm that had no walls around, can the farm owner fence in his farm and make a door for it? Malik answered, 'He would not be entitled to do so except by approval of the one who has the passage in the farm'" (Ibn Al-Rami, 1982, p.439).

Before the death of their father they all share the same entrance with a direct connection to the road



After their father's death they inherited the house and divided it into two parts, part (A) and (B). The internal land (A) has the right of Al-Istitraqh through the outer one (B).

Figure 7.6 The Internal Land (A) has the Right to Pass Through the External One (B) According to the Right of *Al-Irtifaqh* (Source: the Author).

7.1.2 Meaning and Definition of *Haqh Al-Irtifaqh* (Right of Easement)

In general, *Haqh Al-Irtifaqh* means a person's easement of others' possession. It covers cases in which a person makes use of another's possessions while this possession remains that of the other owner.

There are several instances for the right of *Al-Irtifaqh*. It is the due right on a servant property for the utility of another dominant real property, by which the owner of the servant property can enjoy the necessities of drinking water, access etc. It is a right stipulated by *Shari'a* that the owner should allow the usufructuary to pass through and must be compelled to do so because easement is a right determined by *Shari'a*, whether the need for easement is new or was established in advance by *Ihya'a* or division.

7.1.3 *Al-Irtifaqh, Al-Intifa'a and Al-Manfa'a*

The right of *Al-Irtifaqh* is entitled to a certain property and puts it in service of another property. It is compulsory therefore upon the owner of the property. It is thus a negative right that prohibits person to stand against a neighbour. Under Al-Hanafiya doctrine, *Al-Irtifaqh* is considered to be permanent upon the thing to which it is attached. It is not terminated with a change of owner nor does it end upon the death of the owner. Some of Al-Malikiya jurists suggest that the right of *Al-Intifa'a*, however, is due a certain person, thus it may lapse in time.

“Right of Al-Irtifaqh includes the following rights: Al-Shorb [right of access to drinking water], right of Al-Shofa'a [preemption], right of Al-Moroor [passage], right of Al-Majraa [water canal passage] and right of Al-Maseel [gully] and right of neighbourhood” (Ahmed, 1935, p.16).

Al-Irtifaqh is a right of enjoyment applied to a certain property other than that which is owned. In the jurists' view, the concept of *Al-Irtifaqh* right is a matter of *Al-Manfa'a* possession. This is a *Manfa'a* between two real properties. It is a right that belongs to them permanently irrespective of how ownership is assigned. The owner of this *Manfa'a* is the owner of the benefit giving property. Thus the right of *Al-Irtifaqh* is really a *Manfa'a* acquired from a servant property for the benefit of a served property. Because of this consideration, it is not confined to a limited time, as are other utilities, but it remains as long as the real property or until the owner of *Al-Irtifaqh* right disclaims it legally (Al-Zorka, 1968, vol.3, p.35-37).

In definition of *Al-Irtifaqh* Al-Qabes said: *“According to the lawmaker's custom, it is what a man is competent with in Al-Irtifaqh and Al-Intifa'a such as the house road, water gully, drinking and road path is not a complete disposition. He may enjoy his water gully on his neighbour's roof and by his house road. If he desires to dispose of it by possession within the framework of selling, or gift, or both, he cannot do so”* (Al-Abbadi, 1974, vol.1, p.188).

7.1.4 Establishment Reasons of Right of *Al-Irtifaqh*

When *Al-Irtifaqh* right is attached to a public property such as public roads, great rivers and public sewers, its origin is in the public incorporation of these utilities. This must be abided by legally as happened when Caliph Omar Ibn Al-Khattab ؓ commanded Al-Dahaak Ibn Khalifa ؓ to pass canal from *Al-Areed* (a place) to his land through Mohammed Ibn Salman's land. Thus this right was lawfully established.

The right of *Al-Irtifaqh* may emerge as a result of the natural positioning of two properties; one of them might be higher than the other, so water of the first flows to the second. In the last case, the right would be established on the lower property (see figure 7.7).

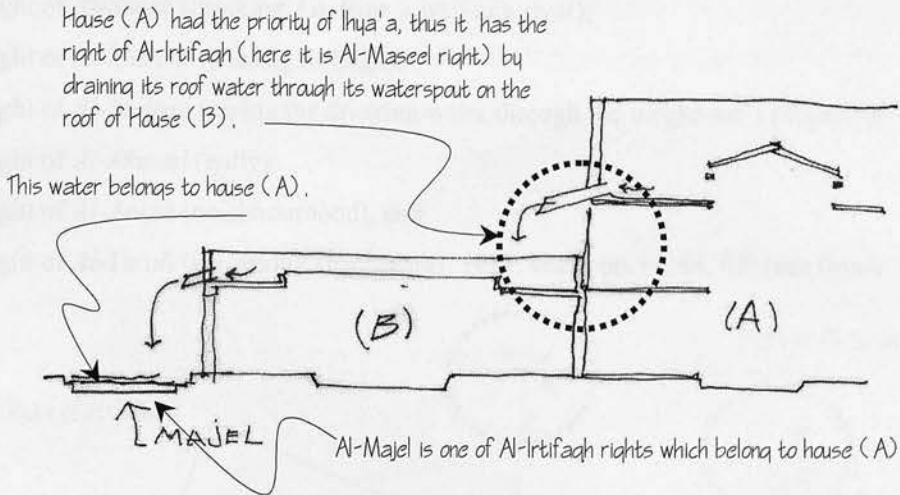


Figure 7.7 The Right of *Al-Irtifaqh* may Emerge as a Result of the Property Location (Source: the Author).

Otherwise the right of *Al-Irtifaqh* may arise from being stipulated in a compensation contract. Here a dispute arose among jurists as follows:

The majority of Al-Hanafiya decided that it is not valid to establish *Al-Irtifaqh* rights under independent contracts, but these rights might emerge if they are stipulated in compensation contracts, even though some of Al-Hanafiya jurists see the permissibility of instances of *Al-Irtifaqh* being established independently (Ibn Abdeen, 1966, vol.5, pp.77-88). Al-Malikiya and Al-Shafi'iya jurists decided that these rights might arise by virtue of compensation contracts independently, since they see utilities as funds.

Permission from owner of servant property is needed if it was owned in special possessions (Abu Zahra, 1984, p.86). But, on the principle that the old remains as it was since it was presumably built on correct grounds, if an old construction contravenes *Al-Irtifaqh* right, so the right is judged to be nullified and eliminated. Age is considered to infer satisfaction, something already granted and acknowledged. Estimating the period of age is disagreed upon but is said to be four years or more (Ali Al-Khafeef, 1963, p.125).

7.1.5 Categories of Al-Irtifaqh

The majority of *Al-Hanafiya* jurists have decided that there is a fixed number of categories of *Al-Irtifaqh* rights (six rights), so contractors are not allowed to establish new rights. These are:

- Right of *Al-Shorb* (drinking, i.e. from a well or a river);
- Right of *Al-Moroor* (passing through);
- Right of *Al-Majraa* (piping the drinking water through the neighbour's property);
- Right of *Al-Maseel* (gully);
- Right of *Al-Jewar* (neighbourhood); and
- Right of *Al-Ta'ali* (elevation); (El-Sanhori, 1953: vol.1, pp.34, 64, 65) (see figure 7.8).

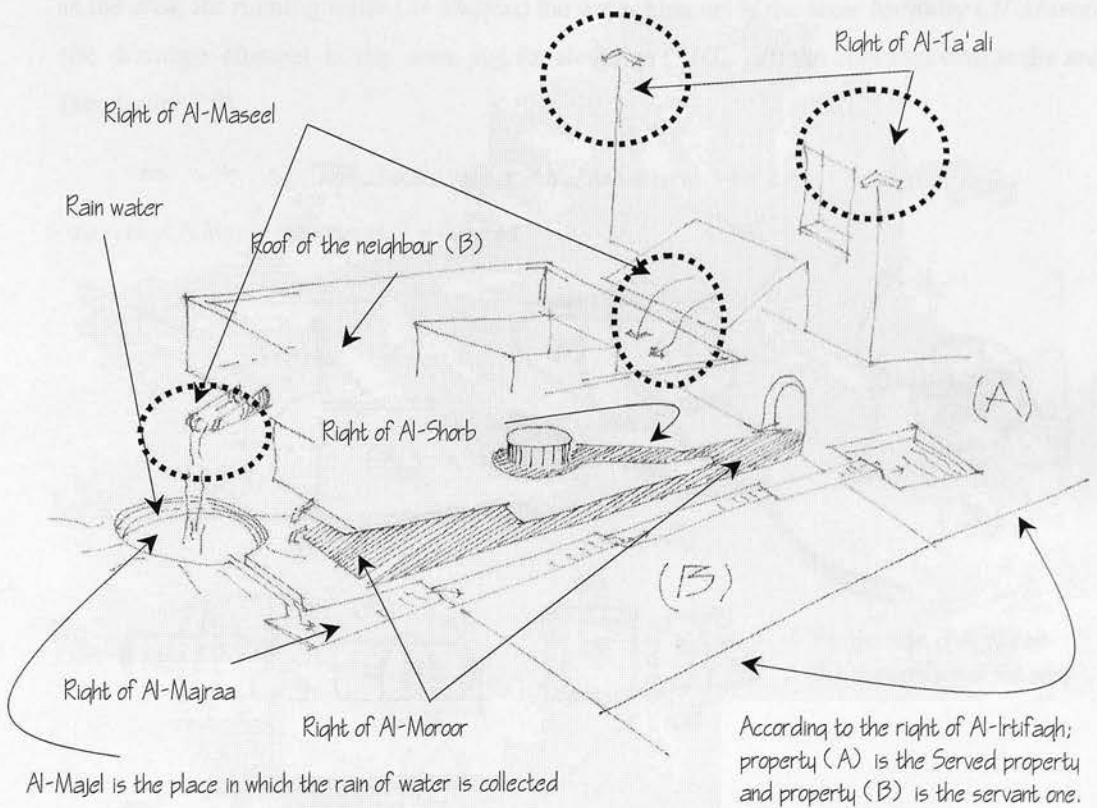


Figure 7.8

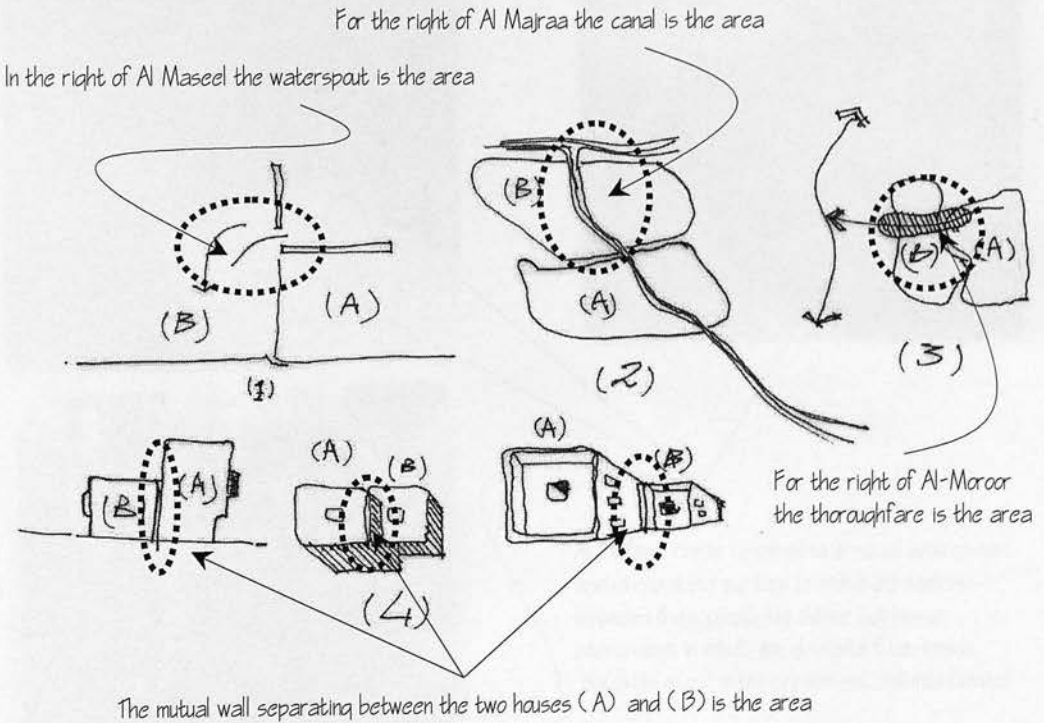
A Hypothetical Configuration of *Al-Irtifaqh* Rights According to Al-Hanafiya Jurisprudence (Source: the Author).

Al-Malikiya and *Al-Shafi'iya* state that *Al-Irtifaqh* is not confined to such a degree and it is licit to agree upon establishing new rights. Sheikh Ali Al-Khafeef agreed with them in this concern, seeing that they are many categories and differ as long as their subjects, reasons and aims are different. These include things that relate to water in use and in drainage, and those that relates to buildings, their improvements, availability of sun and air and so on (AL-Khafeef, 1963, p.125).

7.1.5.1 Difference Between Right of *Al-Majraa* and Right of *Al-Maseel*

Majraa is the right that a man has to run water through his neighbour's property for his own use. *Maseel* is the right that concerns the definition of excessive water discharged from his property through his neighbour's. *Al-Irtifaqh* points out to a necessary *substantive environmental fact, which deals with existence of three prerequisites for Al-Irtifaqh*:

- A property benefiting from *Al-Irtifaqh* (the served one).
- A property to be eased with (the servant one).
- An area shared by both of them; for instance: for passing through (*Al-Istitraqh*), a 'passage' is the area; for running water (*Al-Majraa*) the water channel is the area; for gully (*Al-Maseel*) the drainage channel is the area; and for elevation (*Al-Ta'ali*) the common wall is the area (see figure 7.9).



This example deals with the existence of the three prerequisites for *Al-Irtifaqh*, where (A) is the property benefiting from the right (the served one), (B) is the property to be eased (the servant one) and the area shared between them which will act as the physical right.

Figure 7.9

The Three Prerequisites which are Essential for *Al-Irtifaqh* Right (Source: the Author).

7.2 Right of *Al-Irtifaqh* and Preservation of the Traditional Environment

In respect of the traditional environment, the right of *Al-Irtifaqh* had a prominent impact on two levels. Firstly, it affected the status of the property itself and the resulting social environment. Secondly, it encourages parties to sit and negotiate. Not only does this lead to improvements in the environment but a will to preserve, care for, maintain and serve those elements 'included' in their properties, ensure road cleanliness and preserve road entrance gates and water canals (see figure 7.10).

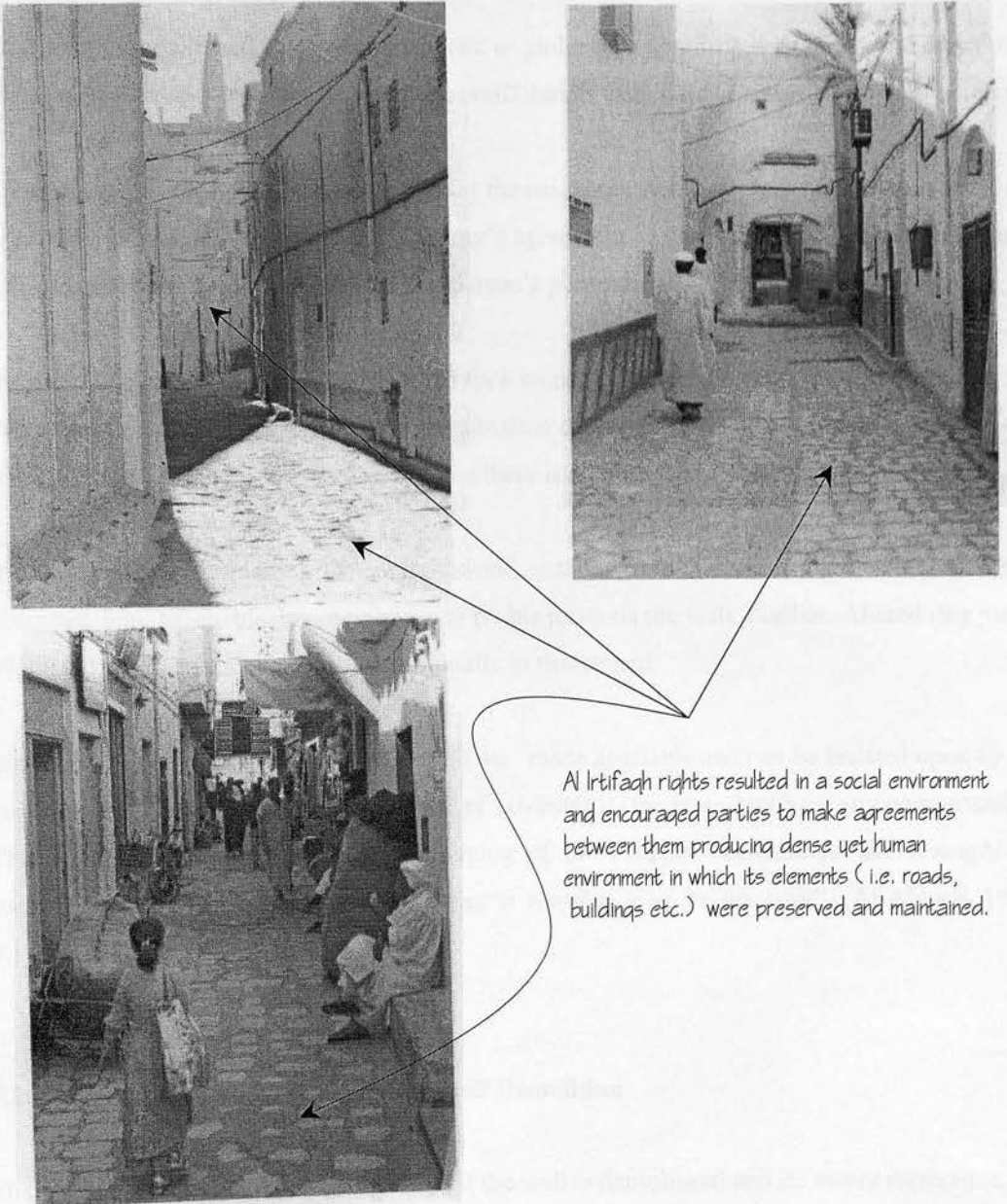


Figure 7.10

Rights of *Al-Irtifaqh* and the Preservation of the Traditional Environment
(Source: Brahim Ben Yousef, 1974, pp. 114,115, 118).

7.2.1 Regulations of Common Walls on Ownership Limits

Rules governing the common walls give a true image about neighbour to neighbour relations and their impact on the formation of borders between neighbours. The next few cases illustrate how inhabitants of traditional environments gave great attention to these common walls.

7.2.2 Fixing a Ceiling Joist on the Neighbour's Wall

Is a neighbour allowed to put a wooden joist or girder on a common wall (and owned by one of them) if he needs so and does not harm the wall? Jurists settled this matter in two viewpoints:

First: Jurists agreed that it is preferable for the neighbour not to prevent him. If he is strict and prevents him, he must seek his neighbour's agreement to this prevention because no one can dispose of others' possession without that person's permission.

Second: The neighbour has the right to fix a wooden joist on the common wall provided that two conditions are met. These are that the situation causes no harm to neighbour's wall, i.e. that joists are light and the wall is strong and that there is no alternative way to make roofing.

If the neighbour (owner of the common wall) abstains from making any protest, the governor obligates him to enable his neighbour to fix his joists on the wall. Further, Ahmed (the jurist) stipulated not to consider permission originally in this regard.

Al-Hanbaliya sees that permission should be made available and can be insisted upon by the governor for it is the neighbour's right of *Al-Intifa'a* freely and without any compensation. Those who confirm necessity cite the saying of the Prophet Mohammed ﷺ: "*A neighbour cannot prevent his counterpart from fixing a wooden joist to his wall*" (Al-Abbadi, 1974, p.112).

7.2.3 Right of *Al-Irtifaqh* and the Wall Demolition

The author would like to highlight that if the wall is demolished and its owner restored it, the neighbour who had the right of *Al-Irtifaqh* cannot fix his new joists without receiving new permission. If the joist is broken and he wants to replace it, it would be as if he were restoring another. He would also need the permission of the common wall owner.

The common wall owner has the right to rent his wall to his neighbour in lieu of selling it. Since the contracted is dependent upon a certain *Manfa'a*, it is the right of the wall owner to know the number and loads of joists going over his wall.

7.3 Right of *Al-Istitraqh*

Al-Istitraqh is one person's use of another's possession to access or maintain his own property. In addition it includes the taking of grass and water from the neighbour's property. Jurists agreed upon the condition of the landlord permission, that no harm would be done to the neighbour's property or his *Hareem* (all necessary utilities needed for the property like its road, *Maseel*, *Majraa* etc.) (Ibn Rajab, 1933, pp.18-20, 30, 31).

The Public has the right of *Al-Istitraqh* (entry) in private paths when the public road gets crowded (Al-Atasi, 1924, vol.4, p.161) (see figure 7.11). Under the right of *Al-Moroor* a person is entitled solely to pass through another's possession, even with his beasts of burden, in order to reach his own property (see figure 7.11).

The owner of land (A) has the right of *Al-Moroor* through the land of his neighbour (B).

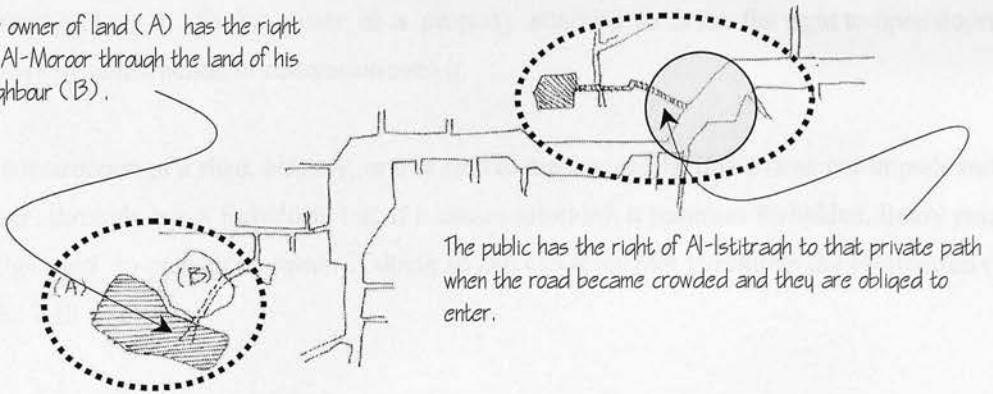


Figure 7.11 Right of *Al-Istitraqh* (entry) in Private Paths and through the Other's Possession (Source: the Author).

The rule stipulated by *Shari'a* in respect of a person's use of another's property to access his own property and which should be taken into account in this regard, is that entry without permission should cause no harm to the landlord. This rule was established and narrated by Abu Dawood: "*Samorah had a palm in the garden of a man of Al-Ansar who was his kin. Samorah*

was entering the garden for the sake of his palm that the man felt harm, so he asked Samorah to sell or transfer it, but Samorah refused. The man mentioned this to Prophet Mohammed ﷺ who asked Samorah to do so, but he refused, then asked him to gift it, but he refused as well. Therefore, Prophet Mohammed ﷺ told Samorah that he is making Darar and told the man of *Al-Ansar* to go and uproot his palm tree? (Sakher C.D, 1996, Abu Dawood, no.3152).

7.3.1 Rights of *Al-Irtifaqh* in Roads

Understanding the rights of *Al-Irtifaqh* in the public roads (*Tareeqh Al-Muslimeen*) and private cul-de-sacs (*Al-Tareeqh Gha'er Al-Nafiz*) is quite essential in studying the formation of the urban fabric of any Islamic City. Since *Al-Irtifaqh* principle is one of the important factors which formed the roads and the streets in every Islamic City the topic is elaborated in greater detail later on in the chapter of *Tareeqh Al-Muslimeen* (Chapter Twelve).

7.3.1.1 The Right of *Al-Irtifaqh* in *Tareeqh Al-Muslimeen*

Tareeqh Al-Muslimeen concerns land that is not possessed by anyone and gives anyone the right of passing along it. Every owner of a property attached to it has the right to open doors or windows by construction or restoration onto it.

The construction of a shed, balcony, or of a stall to display goods, if this does not impede traffic passing through, is not forbidden, but, if it causes mischief, it becomes forbidden. Every person has the right to prevent an owner of doing so and can force him to remove the obstruction (see figures 7.12 and 7.13).

7.3.1.2 Right of *Al-Irtifaqh* in *Al-Tareeqh Gha'er Al-Nafiz*

Al-Tareeqh Gha'er Al-Nafiz is land owned by one person or many. Its owners have the right to go through it and open doors and windows by construction or restoration onto it unless this causes harm to others. None have the right to build a shed, or a balcony, or a shop except by the permission of all co-owners (this is also covered in detail in the chapter of *Tareeqh Al-Muslimeen*).



The construction of a shed, balcony, or stall to display goods, if this does not impede traffic passing through, it is not forbidden, but if it causes mischief, it becomes forbidden.

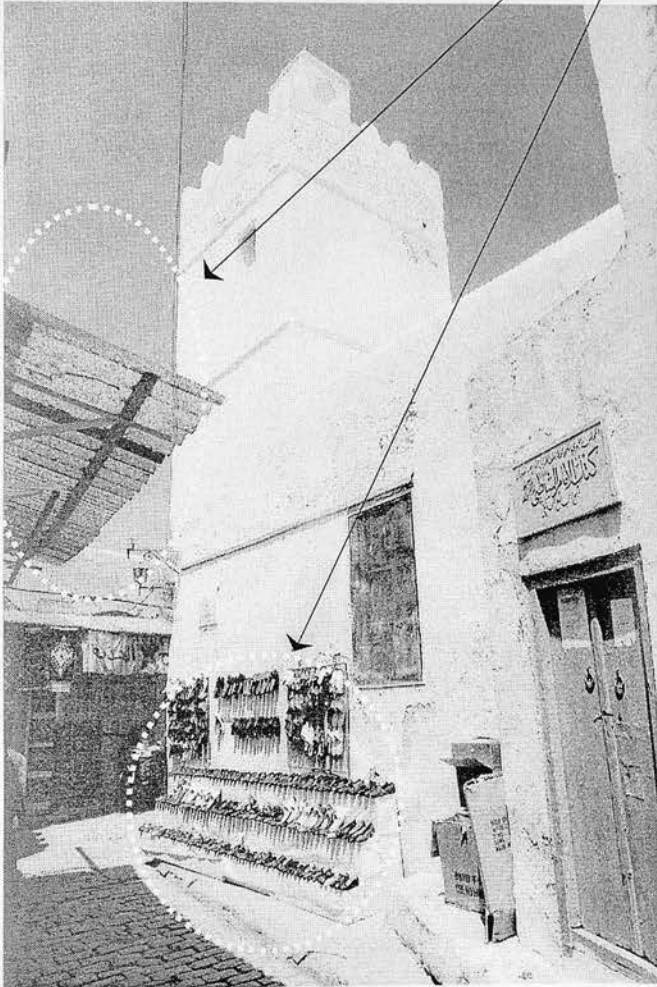
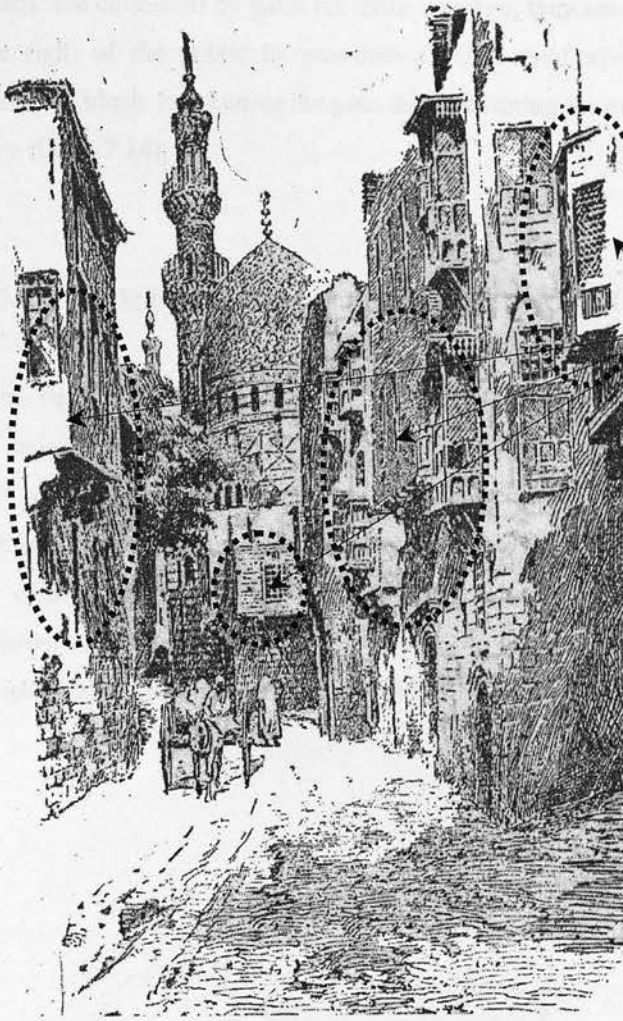


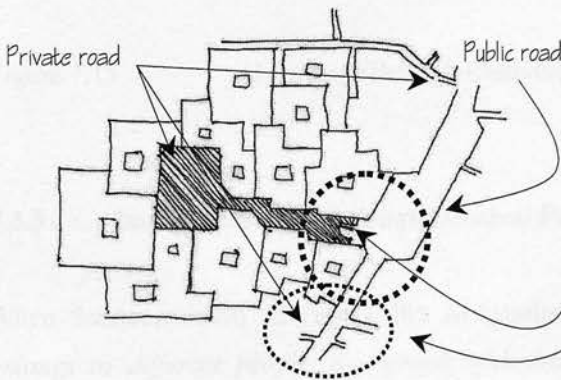
Figure 7.12

Right of *Al-Irtifaq* in *Tareeqh Al-Muslimeen* (Source Brahim Chabboub, 1979, pp.72, 74).



The Roshan (an extended window to the street) is one image of the Al-Irtifaqh with the air of the streets in the traditional environment.

Figure 7.13 *Al-Irtifaqh in Tareeqh Al-Muslimeen* (Source: Ibraheem S., 1992, p. 21).



This gate which is built by the early construction of the private road will hinder the public right to go through.

Since there is no gate, the public can enter these private paths at times of crowdedness.

Figure 7.14 *Al-Irtifaqh in Al-Tareeqh Gha'er Al-Nafiz* (Source: the Author).

The public has also the right to use these roads when the public road gets crowded. If private roads are closed off by gates put there long ago, they are considered to be obstacles, obstructing the right of the public to pass through. Owners of private roads have no right to agree among them to block or remove the gate, thus redefining the public right to access as indicated above (see figure 7.14).

7.3.2 Right of Al-Istitraqh and Building in a Land among Cultivated Lands

This right regards building in a land among cultivated lands owned by others. Ibn Habeeb said: *"I asked Isbagh about a man's land in the middle of others' land and which he can only reach for sowing and harvesting by going through feddans [lands] belonging to others. He wanted to initiate construction in his land, but owners of feddans refused and said that he would trample or otherwise damage their feddans if they were to plant. Would he thus be prevented from constructing in his land? Isbagh replied, 'he would not be forbidden ... but he is prevented from causing harm to people or plants' "* (Ibn Al-Rami, 1982, pp.437, 438) (see figure 7.15).

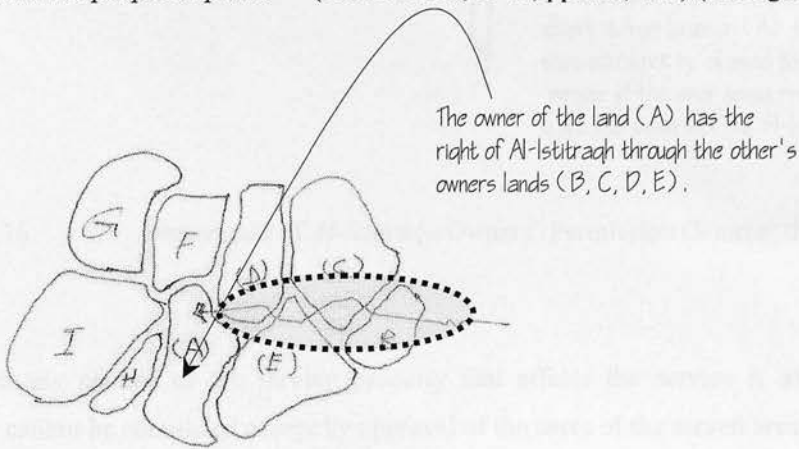


Figure 7.15 Al-Istitraqh through Cultivated Lands (Source: the Author).

7.3.3 Importance of Al-Istitraqh Owners' Permission

When Sahnoon asked Al-Faqeeh Ibn Al-Qassim, *"If a house exists inside another and each belongs to different people, the people of the inner house having a passage through the outer one, if the people of the outer house wanted to divert their door to another location, but people of the inner house refuse, are they allowed to do so? Ibn Al-Qassim replied, 'I do not find any thing relevant from Malik. In my view if they wanted to divert the door to a location near the*

existing door and no harm is caused for people of inner house, I think they should not be prevented from so doing. If they wanted to divert it to another location far from the original one, they are not allowed to do so if people of inner house refuse. Then Sahnoon said, 'what if the people of the outer house wanted to narrow the house door and this is rejected by people of inner house?' Ibn Al-Qassim replied, 'They are not allowed to narrow the door' '' (Sahnoon, 1978, vol.4, pp.269, 270) (see figure 7.16).

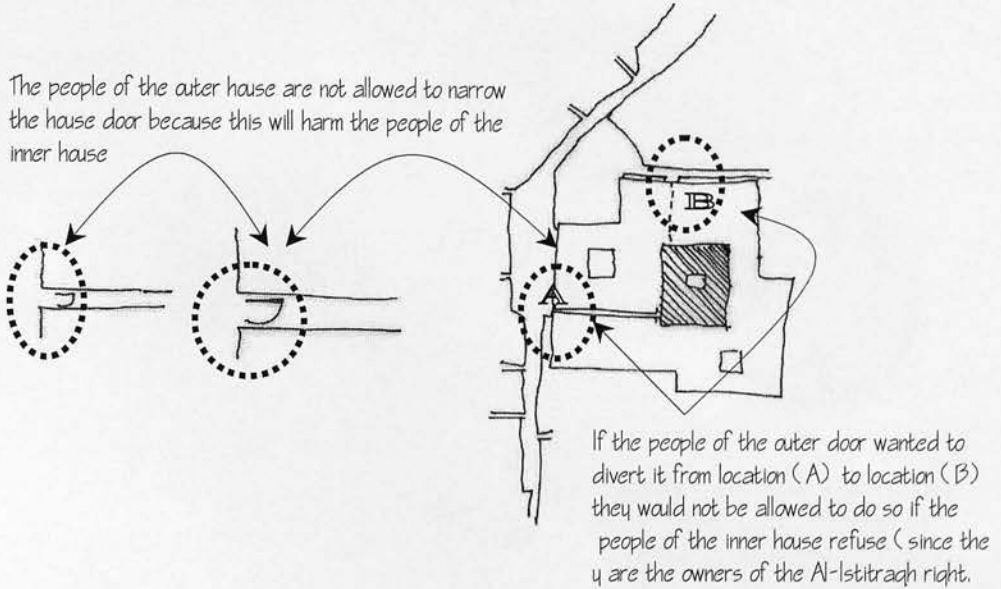


Figure 7.16 Importance of *Al-Istitaqh* Owners' Permission (Source: the Author).

Therefore any change of the serving property that affects the service it affords the served property cannot be completed except by approval of the users of the served area under the rights of *Al-Istitaqh*.

7.3.4 Dedication, Selling or Renting of *Al-Irtifaqh* Right (of Public Road)

All jurists permit the owner of a serving property to sell the right of using a part of his property to his neighbour to be utilised as a road, or flowing water or a *Noria* (waterwheel) through his farm as long as the two parties agree on the location and capacity of the passage etc. He can also sell a route through his house to a certain neighbour but to keep the right to it for himself (for more details see Ibn Abdeen, 1979, vol.5, pp.77, 79, Al-Nawawi, 1983, vol13, pp.403-405).

7.3.5 Selling Right of *Al-Irtifaqh* to a Third Party

Al-Hanbaliya advised that *Al-Irtifaqh* cannot be sold or gifted independently, but only as per deals attached to it such as selling the house and land with its attendant rights (Al-Abbadi, 1974, vol1, pp.186-188). *Al-Malikiya* and *Al-Shafi'iya* jurists allowed the independent selling and gifting of *Al-Irtifaqh*, since these rights are considered as assets. Should this be done it would affect the environment in different ways (see figure 7.17).

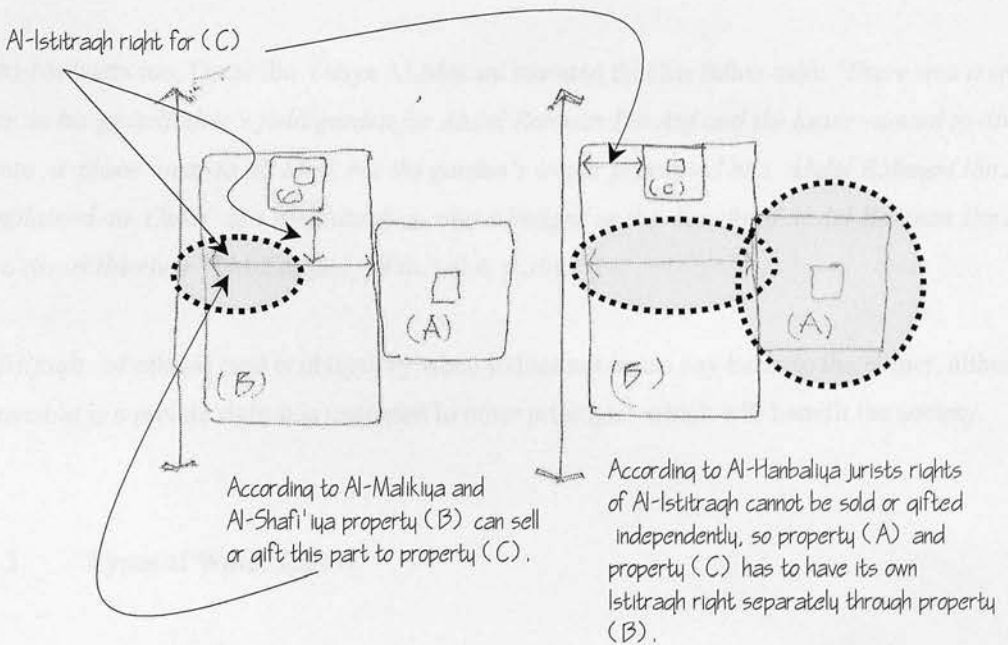


Figure 7.17 Selling the Right of *Al-Irtifaqh* to a Third Party (Source: the Author).

7.4 Rights Related to Water

7.4.1 Introduction

As previously pointed out, the right of *Al-Majraa*: is man's right to run flowing water (i.e. drinking and irrigating water) through another's (his neighbour for example) property for his own use.

Ibn Rajab in his book *Al-Qawa'id* (The principles) highlighted *flowing water* such as water from his roof on to another's (Ibn Rajab, 1933, p.123); *Al-Zorqani* said, " 'As is well-known and advised by *Al-Malikiya* doctrine, a man cannot make use of anything related to [flowing water] in view of Hadith of Prophet Mohammed ﷺ 'Muslim's money is legitimised unless of his

own free will' " (Al-Zorqani, 1936, vol.4, p.34); Al-Hanafiya Doctrine also states this (see Al-Qurafi, 1936, vol.5, p.231).

Ibn Rajab narrates Abi Thawor saying: "*It is necessary for a person to flow water through his neighbour's land or canal if he flows it in his inward land*" (Ibn Rajab, 1962, p.271). This doctrine (Al-Hanbaliya) relied on Omar Ibn Al-Khattab's judgement in regard to *Al-Majraa* rights

In Al-Mowatta too, Omar Ibn Yahya Al-Mozani narrated that his father said: '*There was a small river in his grandfather's field/garden for Abdul Rahman Ibn Auf and the latter wanted to divert it into a place near to his land, but the garden's owner prevented him. Abdul Rahman Ibn Auf complained to Omar Ibn Al-Khattab ؓ who adjudged to the benefit of Abdul Rahman Ibn Auf ؓ to divert the river*' (Al-Zorqani, 1936, vol.4, p.35).

Al-Irtifaq of others' land is obligatory when it does not cause any harm to the owner, although ownership is a private right it is restricted to other principles which will benefit the society.

7.4.2 Types of Water Rights

This section looks at rights relating to water, divided into two categories: main rivers and their tributaries; which are not owned or possessed by anyone; and streams or wells in privately possessed land, such as canals and small waterways made by a certain person in his possession or in a waste land he is entitled to by *Ihya'a*. Water that comes from sources (i.e. springs) in somebody's property is not in the possession of the land's owner in spite of the fact that they are flowing on his land. Right to water differs from the right of *Al-Shorb* or of *Al-Shafa* (drinking water for humans and animals respectively). It is important to define the meaning and the differences between these rights.

7.4.2.1 Right of *Al-Shorb*

Jurists use the term right of *Al-Shorb* to indicate share of water, or time of drinking, or irrigation of plants and trees. This right of drinking includes the right of *Al-Shafa* (drinking rights for animals).

Since water is not possessed by the landowner but shared by the people, *Al-Hanafiya* opinion tends to see that *Al-Safa* right includes the drinking right. *Al-Malikiya* holds that water is possessed by the landowner and he may either let it run or retain it whenever he wishes since he is more entitled to it. *Al-Hanbaliya* holds that if water flows from an unpossessed river to a possessed stream, it comes into the possession of the stream's owner, but if the water flows in a possessed land because it had been directed there through man-made channels, it would not be possessed by the land owner in view of the Prophet's Hadith, "*People are partners in three things water, grass and fire*" although the land owner would be entitled to it more than anyone else. Thus, once he has taken what he needs and if something is left, he cannot prevent anyone from using it (Ali Al-Khateef, 1963, pp.127, 128).

Sheikh Mohammed Abu Zahra explains the lack of established drinking rights that requires obtaining permission from the landowner by the fact that the drinking amount is an unknown. Otherwise the landowner could be exposed to a certain harming seen in deprivation of *Al-Intifa'a* and probability of nullifying his right to enjoy water flowing in his own possession (Abu Zahra, 1984, p.88).

7.4.2.2 Right of *Al-Shafa*

The right to water is established for every human being, not confined to a certain person, for their drinking and their beasts of burden providing it does not cause any harm.

7.4.2.3 Right of *Al-Majraa*

This belongs to the right of drinking and it is defined as flowing irrigation or drinking water to the servant land through other's land. The canal in which water flows may be a possession of the servant land (the one through which the canal passes) or it may be a collective ownership between landlords. For any type of these possessions it is not the right of any owner to hinder the water and no one has the right to change or move its course somewhere else. The owner of the stream has the right to repair and clean his canal. Owners of lands in which the stream passes have the right of drinking and irrigating their lands after the owner of the canal takes the amount of water he needs.

The owner of the land through which the stream passes has no right to prevent the neighbouring stream owner from his drinking right or his right to flow water through. Nor has he the right to

transfer the stream from its place in his land to another place of it except by the consent of its rightful owners.

The owner of the land through which the stream passes has the right to demand the stream owners to repair damage done by their stream. Thus, the owner of the stream has the right to pass through the property where the stream goes to repair it (see figure 7.18).

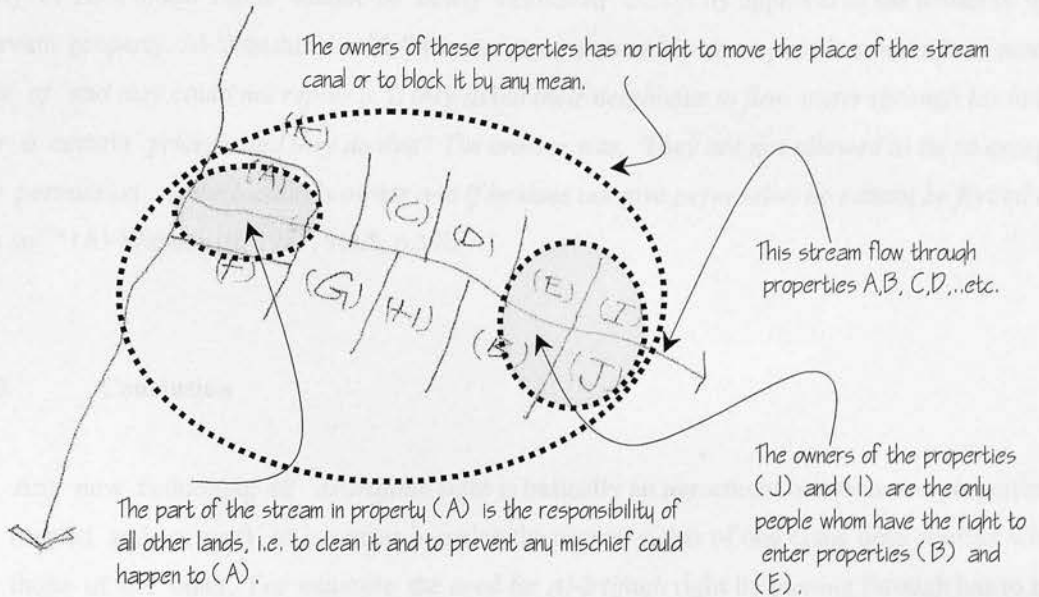


Figure 7.18 Right of *Al-Majraa* (Source: the Author).

In respect of the right of *Al-Majraa* Al-Wanshirisi says: “A man owns a house, its roof and its water stream from one side. He has no other canal stream except from this side and he sold the side containing this canal. The buyer prevented him drawing water from the canal, which had not been mentioned as a condition of the sale. Therefore, it was judged that, if there was no access to the water except from this side and the buyer knew that before buying, the buyer can do nothing but take an action [i.e. to get back his money] because it is a breach [of the conditions of sale]” (Al-Wanshirisi, 1981, vol.9, pp.53, 54).

7.4.2.4 Right of *Al-Maseel*

Al-Maseel is the right to drain excessive water through others' possession. The right of *Al-Maseel* would not be nullified by the change of the property state and condition in which it passes through; for example from an agricultural land into a residential one. Repairing defects in

the flow is a right of its owners. Thus, they have the right to enter other properties for this purpose.

7.4.3 Newly-Fashioned Rights of *Al-Irtifaqh* and their Rule

Any of *Al-Irtifaqh* rights cannot be newly fashioned except by approval of the owner of the servant property. Al-Wanshirisi said, “*A water stream owned by some people could not be made use of and they could not repair it. If they asked their neighbour to flow water through his land for a certain price; could they do that? The answer was, ‘They are not allowed to do so except by permission of the locality’s owner and if he does not give permission he cannot be forced to do so’*” (Al-Wanshirisi, 1981, vol.8, p.398).

7.5 Conclusion

- Any new fashioning of *Al-Irtifaqh* right is basically an agreement between two properties (served and servant) in instances in which the normal rights of one come onto conflict with those of the other. For example the need for *Al-Irtifaqh* right by passing through has to be done with the consent of the owner of servant property. Upon establishment of *Al-Irtifaqh* right, the owner of the serving property had to allow the owner of the served property to pass through (sometimes against the wish of the serving property), because *Al-Irtifaqh* is ratified by *Shari’a* and is based on fundamental rights established by *Ihya’a* or division.
- The owner of the serving property knows that *Shari’a* supports the owner of *Al-Irtifaqh* right and that *Shari’a* will support the owner of *Al-Irtifaqh* right. Also the owner of *Al-Irtifaqh* right needs to be aware of possible preventative measures by the serving property’s owner. This has forced neighbours to come to agreements, so a stable environment could be obtained. For instance if *Al-Irtifaqh* right was in a common passage between two or more neighbours; then its maintenance; cleaning; painting; lighting and other services needed for the passage would be established and distributed between the beneficiaries. This is the contribution that the right of *Al-Irtifaqh* has made to the establishment and evolution of the environment and emerging of agreements and customs.

CHAPTER EIGHT

Al-Ijara

8.0 Introduction

This chapter will discuss the different aspects of *Al-Ijara* (leasing) which is a contract between the owner of a thing (the lessor) and the user of the thing (the lessee). The thing being leased is known as *Al-Mal* (the thing). The owner of the thing is known as *Al-Malik* (the owner) and the user of the thing is known as *Al-Mutajir* (the user). The contract is known as *Al-Ijara* (leasing) and the thing being leased is known as *Al-Mal* (the thing).

8.1 Meaning of *Al-Ijara*

Al-Ijara is a contract between the owner of a thing (the lessor) and the user of the thing (the lessee). The thing being leased is known as *Al-Mal* (the thing). The owner of the thing is known as *Al-Malik* (the owner) and the user of the thing is known as *Al-Mutajir* (the user). The contract is known as *Al-Ijara* (leasing) and the thing being leased is known as *Al-Mal* (the thing).

8.1.1 The *Al-Ijara* Contract

The *Al-Ijara* contract is a contract between the owner of a thing (the lessor) and the user of the thing (the lessee). The thing being leased is known as *Al-Mal* (the thing). The owner of the thing is known as *Al-Malik* (the owner) and the user of the thing is known as *Al-Mutajir* (the user). The contract is known as *Al-Ijara* (leasing) and the thing being leased is known as *Al-Mal* (the thing).

8.1.2 Elements of the Contract

The *Al-Ijara* contract is a contract between the owner of a thing (the lessor) and the user of the thing (the lessee). The thing being leased is known as *Al-Mal* (the thing). The owner of the thing is known as *Al-Malik* (the owner) and the user of the thing is known as *Al-Mutajir* (the user). The contract is known as *Al-Ijara* (leasing) and the thing being leased is known as *Al-Mal* (the thing).

CHAPTER EIGHT

*AL-Ijara***8.0 Introduction**

This chapter will centre on the different aspects of incomplete ownership through covering the ownership of utility rather than ownership of realty. This type of incomplete possession is known as *Al-Ijara* (lease contract). The author will illustrate how it maintained the environment and met the changeable needs of the growing community. The case studies make it clear how the contracts of *Al-Ijara* contributed to maintain the environment.

8.1 Meaning of *Al-Ijara*

Al-Ijara is the sale of utility for a fixed period, which means that the person purchasing the utility is entitled to carry out by himself or make someone else enjoy by the right of *Al-Intifa'a* either by compensation or without compensation like giving it as *Areyah* (loan). Possession of a utility is similar to the possession of land property.

8.1.1 The Basis of *Al-Ijara* Contract

The sale contract or the possession of a utility should have many terms well defined in the contract. All of these items should be clear and obvious to both parties: contracts that are entered into or made for something unknown will lead to disputes. The leased property should not cause any damage like providing a shop or scanting in a house provided for dwelling.

8.1.2 Duration of the Contract

"It [a contract] may be made a period for one year either Roman, Persian, Coptic or Gregorian and the people must know that it would be permissible and if one of them does not know this fact it will not be valid" (Ibn Qudama, 1970, vol.5, p.45).

8.2 Mentioning what is Related to Al-Ijara in the Islamic Law

"Tamleek Al-Manfa'a [Possession of utility] is the permission for someone to carry out by himself or with another one, leasing with or without a compensation by Areyah. For example, one hiring a house or borrowing it is entitled to hire it to another one or leave it without a compensation and shall dispose of such utility similar to possession of owners in their ownership as though he owned it. Possession of utility is similar to that one of possession of land" (Tahzeeb Al-Furouk, vol.1, p.193).

In this concern the person to whom a property is leased is the owner for a defined period and the contract of leasing is similar to contract of sale but a sale for utility, not for the property.

While *Tamleek Al-Manfa'a (Al-Ijara)* is a lending agreement for a certain time such as contractive leasing and the will of utilities, *Milkiyat Al-Manfa'a* is not confined to a certain period and it belongs to the ownership of the property. In Al-Forouk, vol.1, p.187 Al-Qurafi says: *"Tamleek Al-Manfa'a is absolute possession for only a certain time as handled by a contract of lease"*, *Milkiyat Al-Manfa'a* is a right that is not confined to a certain period, nor does it belong to the ownership of the property. *Tamleek Al-Intifa'a* is similar to that the right of the market seats in that it is attached entirely to a property and is renewed regularly and can be claimed by whoever arrives earliest (Al-Nawawi, 1983, vol.5, p.3).

In Al-Moghni *"Therefore the lessee owns the utility by contract and as a buyer shall own what is bought by sale, the possession of that leased entitlement shall terminate as the possession of the seller shall terminate since it [the utility] will not be permissible to dispose it since it becomes owned by someone else and the seller shall not be authorised to dispose of what is sold"* (Ibn Qudama, 1970, vol.5, p.450). He also indicated in vol. 5 page 448 that: *"Leasing is an abiding contract between two parties that neither of them is entitled to cancel and this is approved and said by Malik, Shafei and other jurists. Whereas it is a contract of compensation so it becomes binding by sale and is itself a sort of selling"* (for more details review Ibn Abdeen, 1966, vol.6, p.76, Al-Shafi'ie, 1904, vol.4, p.27).

"Leasing is the selling of utilities to others. For this reason the people of Al-Madinah call it 'sale' and by that they mean the sale of utility. That is why the alternative is called 'contract leasing'" (Al-Kasani, 1986, vol.4, pp.173, 174-192).

8.3 Division of Utilities in Al-Ijara

“Division of utility in leasing is not permissible unless it is unavoidable even the lessee said ‘I hired this for you from the beginning of the day until noon and from afternoon to sunset’, the lease shall not be valid since there is no need for such division” (Ibn Abdul Salaam, 1975, vol. 2, p.157). Also in the book of Bada’ih Al-Sana’ih: *“If a man hires a road from certain house to go through it at certain times this shall not become valid according to Abu Hanifa because the hired side is unknown rather than the whole house so becomes leasing for the common and this is not lawful”* (Al-Kasani, 1986, vol.2, p.180).

“If a man hires a drain to pour something in, it will not be valid because the quantity is unknown and the damage caused by a substance relates to its quantity if it is either large or small; so what is contracted is unknown. And if a man hires a wall to put some planks on or to build something on or fix a drain to, this shall not become permissible because fixing a bolt and building something there shall be different on the basis of the weight, the heaviness of the weight of the objects causing damage to the wall, and the damage is excepted in this contract inductively. Thus, what is contracted is unknown. In addition if a man hires a small part of the wall to obtain access to light or fix a switch in the wall itself, this shall become invalid for the reason indicated above” (Al-Kasani, 1986, vol.4, p.181, see also Ahmed, I., 1935, pp.156, 165, 169).

From the first case we can understand that the determination and demarcation of leased part of the road itself is a provision of the validity of its lease. In the second case, the quantity of liquid poured in to a drain determines the damage and the lease is valid as long as the quantity of water is known. This act guards against the possibility of causing a blockage. Similarly, the determination of the weight on a particular wall preserves and maintains it and so on. Therefore this aspect of leasing in the traditional environment is one of the factors that maintains the environment.

8.4 Responsibility of the Owner upon Leasing a Building

The first case shows that the owner is responsible for the availability of what is necessary for utilisation of the building such as its walls and gates, since these are essential requirements for a leased dwelling. The owner must also maintain such requirements throughout the contract because utilisation shall not be carried out except by them. For example, the interruption of

water from its source or change of its colour or taste as drinking and ablution can invalidate the contract.

“A cat fell into the well of a house in Qurtoba [Cordoba in Spain] so it was ruled the house owner should take it out because the well is one of the house utilities and that the well should be purified, for if the cat stayed in the well for days the water would become of no use at all” (Al-Wanshirisi, 1981, vol.8, p.285, see also Ibn Abdul Salaam, 1969, vol.2, p.126).

On the other hand, if the owner repairs every thing and makes the property good for utilisation, the lessee shall not be entitled to repel the contract (Al-Souti, 1959, p.289, see also Ibn Qudama, 1970, vol.5, p.457).

8.4.1 Damage to Utilisation

Rules covering the opening up of holes in part of the house relate to those on parts of the body which it is illegal to expose before others. *“If a man builds a room in a house and opens a hole to reveal something to the house owner, so the house owner must prevent that damage and if the builder refuses, the latter has the right to terminate the contract as if the other had caused damage to the house”* (Ibn Al-Rami, 1982, pp.316, 317, see also Sahnoon, 1978, vol.3, pp.454, 455, vol.8, p.267).

8.4.2 Maintenance of the Leased Building

Maintenance is necessary in order to make the building suitable for utilisation, for example in cleaning a full drain. *“If the drain becomes full by use of the house, he [the lessee] has to empty it. Al-Shafi’iya approves this, but Abu Thawr said, ‘It should be carried out by the house owner since he is able to utilise it’ ”* (Ibn Qudama, 1970, vol.5, p.458) and Al-Hanafiya said *“It is taken into consideration that this should be carried out by the lessee but should be much appreciated if this is undertaken by the house owner since this is the custom of the people”* (Ibn Abdeen, 1979, vol.6, pp.79, 80).

Ibn Al-Rami indicates that: *“The one who has leased a house and found its drain channel full of solids and other disposals, needs to determine whether the channel was initially blocked by the one who preceded the contract or after the lessee occupied the house. So if it was blocked*

before the contract its clearing should be assumed by the house owner without any difference [between scholars] in this concern, for if the house is not suitable for dwelling except by removing the blockage, the house owner is obliged to remove it. But if the channel was blocked after the contract and the occupation of the leased, it is the responsibility of the lessee to remove the blockage. In this regard, only Ibn Al-Qassim had another opinion, he says in Al-Modawana "Unlocking the toilet or disposal drain and making it operates properly should be in all cases assumed by the house owner" (Ibn Al-Rami, 1982, p.368).

Ibn Habeeb narrated that some scholars approved that "Sweeping of the house and cleaning of the toilet should be assumed by the lessee whether or not it is provided, but Muttareff and Ibn Al-Magashoun approved that 'this should return to the habit of the people of that place'" (Ibn Al-Rami, 1982, p. 368). Abdul Malik said, "Country people are accustomed to dictate that sweeping of the house should be assumed by the lessee, however, cleaning of the toilet should be assumed by the owner" (Ibn Al-Rami, 1982, p.369). Ibn Al-Rami then added, "In this regard, Judge Ibn Abdul Raffia ordered me one day to impose such matter on people in a certain alley which he ordered me to sweep" (Ibn Al-Rami, 1982, pp.369, 370).

8.4.3 Stipulation by the Owner to Let the Lessee Pay the Expenses of the Property

In this regard scholars said that paying the expenses of the property is invalid for the lessee because the owner should assume the costs related to his property (for more details review Ibn Abdeen, 1997, vol., pp.76, 77, also Ibn Qudama, 1970, vol.5, p.459, Al-Kasani, 1986, vol.4, pp.194, 195).

In Al-Modawana Al-Kubra (vol.4, pp.446, 447) Sahnoon asked: " 'What will you say if I hired a house or a bathroom but still need to make the appropriate finishes; so is it permissible in Malik's saying?' Ibn Al-Qassim replied: 'Malik provided that it shall not be permissible while appropriate finishes should be undertaken when the house is built' ". The same source also made it clear (pp.447, 448) that all repairs to defective components of the house should be the responsibility of the owner, not the lessee. This is not so if the property is sold, in which case the new owner must meet all costs in repairing what he has bought. Therefore, as provided by Al-Malikiya, the house owner should assume whole finishing.

Sahnoon adds: "What will you say if I hired a house and a wall or room or the whole house fell down and the house owner said that he shall build what is broken or fallen down or I [the

owner] might not build? And what if the fallen wall revealed the whole house? should this be the responsibility of the house owner who built it or not by virtue of Malik's saying? He [Ibn Al-Qassim] answered: 'the house owner is not entitled to rebuild the fallen wall'; however if something revealed from the house and causes damage to the lessee the following will be said to him: 'If you wish you can stay or get out. But this does not force the house owner to do anything that he does not wish to do. Therefore if the house owner builds it in the remaining period of the leased time and the lessee went out he [the tenant] shall not be authorised to return to complete what's left or remained' " (Sahnoon, 1978, vol.4, pp.447).

"If a defect takes place in the house which makes it impossible to utilise [like some of the building is demolished], the contract shall not be valid or abiding; so the lessee would be leasing the property by choice. If he wishes, he can cancel the contract" (Al-Kasani, 1907, pp.195, 196). In respect of whether owner shall be forced to reconstruct fallen property review Ibn Al-Rami, 1982, pp.354-357, also Ahmed, 1935, p.167 and Ibn Abdeen, 1966, vol.6, pp.74-77).

8.5 Ruling the Custom of Territory

If there arises between the owner and the lessee a dispute of the contract as to whether something is necessary complementary for utilisation, the two parties are not entitled to repeal the contract unless a justification is provided. In Al-Modawana Al-Kubra: "What will you say if I rented a house on somebody's land but the rain damaged the house in winter? Should I leave or will the house owner be forced to repair the damage? Ibn Al-Qassim said: 'If the house owner did so [repaired the damages], so you have to pay the rent, but if he refused to repair the damage you are allowed to leave if it was a clear evident damage'. In such a case the house owner is not required to repair damage unless he wishes to" (Sahnoon, 1978, vol.4, p.455). Sahnoon added in this respect, "The owner shall be responsible for the safety of the walls, ceilings and drain pipes". This now includes electrical connections from outside and inside walls, water supply pipes and other such things.

It is therefore clear that the lessee is responsible for using and maintaining many elements including doors and windows and these are his responsibilities to maintain and repair because he is using them. These examples highlight the recognition of a certain responsibility.

8.6 Theory of Excuse (*Al-Uzer*)

The initial part in any contract covers acceptance and approval by both sides. This is called the principal of *satisfaction of contract*. If a certain circumstance takes place that is a violation of contractual obligations before the expiry of the contract, the contract shall be cancelled on the basis of the *excuse* principle. The principle of satisfaction of contract and its binding authority are attached to keeping such circumstances as they are. Therefore if the contract was valid for many years but one of the two parties leaves; the lessee shall not be obliged to fulfil the contract and the owner is not entitled to bind him to it (for more details about this subject review Al-Dereni, 1967, pp.139, 140).

According to Ibn Qudama (1970, vol.5, pp.432, 562), elements of leased property that are under continuous use, such as doors and windows, should be maintained by the leaseholder. This includes addressing any defects that arise through wear and tear.

“Repairing the house, its drain and what is affected by their construction should all be undertaken by the house owner rather than the lessee because the house belongs to him. More general repairs of the property could be assumed by the owner but he is not forced to do so because the owner is not forced to repair his ownership. The lessee is entitled as well to leave if the house owner does so” (Al-Kasani, 1907, vol.4, p.208).

If the leasing term is over and there is dust in the house resulting from its sweeping, the tenant has to remove it because it resulted from his customary act. However, if the tenant repairs something in the house, nothing shall be counted for his interest because what he required of others' property without their order is not valid.

8.6.1 Scope of Responsibility and Disputes

“Everything said by the house owner shall be taken into account in respect of what is constructed on the house and what is built on it. And what is said about things in the house courtyard or extended out it like doors, bricks or wood and things similar to this, the saying here shall be assumed by the buyer” (Ibn Al-Rami, 1982, p.357, 358). Accordingly, *Shari'a* has resolved the dispute between the tenants and the owner that will affect the environment and the house.

From this we learn that if the tenant claimed that he had added to the construction and demanded for its demolishing, his saying shall not be taken into account over the owner's word. This would have an effect on maintenance of the environment by minimising demolition. A stable environment would result by settling such disputes in this manner.

8.7 Water of Al-Majel

The *Majel* is the place used for collecting rainwater (see figure 8.1). Tutor Mohammed tells us that Sheikhs differed in respect of water of *Al-Majel* by their two sayings, "*Abu Abd Allah Al-Maziri was asked about rain water gathered in the house's Majel. Does this belongs to the house owner or the tenant? He answered: 'this is taken into account on the basis of the customs, Jurist Abu Mohammed Abd Allah considered that such water belongs to the house owner while the doctrine of some Jurists in Al-Madinah such as Solami and others considered that the water belongs to the tenant' "*" (Ibn Al-Rami, 1982, pp.380, 381).

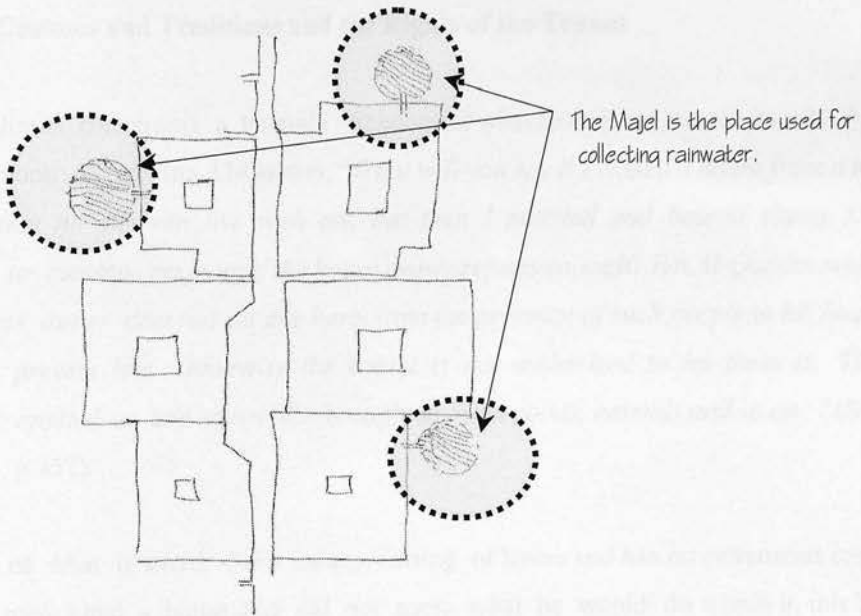


Figure 8.1 Water of *Al-Majel* Relates to what the People Agreed upon (Source: the Author).

On the other hand, Ibn Al-Rami added that Sheikh Abu Mohammed Abd El Hameed provided his legal opinion that water should belong to house owner. *"Water belongs to the tenant since water is included in utilities and it is out of the household so it belongs to him. However after about seven years I [Ibn Al-Rami] found that this is an issue which needs to return to the customs and conventions"* (Al-Wanshirisi, 1981, vol.8, pp.429, 430). So here the water of *Al-Majel* is something related to what the people agreed upon until it became a convention.

8.8 Selling of the House

Jurists considered that 'selling the house' means that the land and whatever is connected to it, like construction, planting or other utilities related to the land like rights of *Al-Irtifaqh* and *Al-Finaa* etc., are included in the selling contract. This means that many of the rights related to that land lie outside the boundaries of the sold land itself (for more details review Al-Nawawi, 1983, vol.11, pp.268-270).

8.9 Customs and Traditions and the Rights of the Tenant

There are limits concerning a tenant's freedom of what he can and cannot do with the leased house. Sahnoon Asked Ibn Al-Qassim, *"What will you say if I leased a house from a man who stipulated that no one can live with me, but then I married and bought slaves. Shall I be authorised to continue my lease if the house owner refuses as such? Ibn Al-Qassim replied that 'if the house owner does not get any harm from the presence of such people in his house so he could not prevent him. Otherwise the tenant is not authorised to let them in. The same restrictions applied to any tenant who brought in extra goods, animals and so on' "* (Sahnoon, 1978, vol.3, p.452).

In regards of what is hired, *Ijara* means leasing of house and has no extraneous conditions. Even if a man hired a house and did not name what he would do within it, this becomes permissible. If he lets someone else live with him without the permission of the owner, this is permissible. By *Ijara* it is not authorised to put any goods in up to the point that it effects the construction or weakens it.

Parts of the property cannot be sold because *Ijara* legalises utilisation and, as such houses are to be utilised for dwelling only. Utilities of the property used for dwelling those that have been

established by custom. Since people do not differ in dwelling requirements except in minor ways. It is thus indicated in traditional law that a tenant is authorised to stall his beast in the house because this action belongs to normal use of the house itself (for more details about the same subject review Al-Kasani, 1986, vol.4, p.182).

“The tenant is not authorised to put something heavy on the roof because this will break the rafters, nor to manufacture anything in the building causing any harm unless this is agreed upon” (Ibn Qudama, 1970, vol.5, p.476). This is approved by Al-Shafi’iya and Al-Hanafiya. The author knows of no contradiction to this rule.

There were other customs and habits for the people regarding territory and its relationships which affect the rights of the tenant. These include that a tenant shall use the property as used by people of such territory in respect of a prevailing profession or industry: Al-Kasani (1907, vol.4, p.183) said, *“It is evident that the shop included in the tailor’s door shall not be hired for a blacksmith or a miller since the profession is a custom and anything else included in such contract only weakens the custom, even if he establishes a shop in the blacksmiths roof without having any talent for such work”* (for more details review Al-Souti, 1959, vol.1, pp.125, 126).

In reply to a question concerning one who hired a kitchen in which to cook sugar, *“The pots that the tenant was allowed to use were damaged and it was a custom that the lessee guarantee whatever is there in the kitchen. Ibn Nojayem replied that what is known [as a custom or a tradition] is similar to what is stipulated. So it becomes his liability”* (Ibn Nojayem, 1968, p.89). It is stipulated here that the tenant has the freedom to utilise such property by his own methods on the condition that he does not harm the house or its neighbours. The tenant may be allowed to use the place as a blacksmith, carpentry or tannery by following conventions made by the residents of the territory. The tenant shall be obliged to ask permission from his neighbours in case of any damage results from his use of the place.

8.10 Conclusion

- From the previous discussion we can conclude that the lease contract is like the selling contract, but for utility not for property and that *Al-Ijara* in *Shari’a* is called *Tamleek Al-Manfa’a* (the possession of utility). The principle of *Al-Ijara* in *Shari’a* allows the tenant to use his property in return for a certain benefit based upon certain a agreement. *Al-Ijara* is distinguished from easement in that it is temporary based on a certain period of time and not

forever as in the case of an easement. It's a personal right made by beneficial use and that the tenant has the full freedom to make use of the leased property since Shari'a gives him this right.

- The uses and benefits gained from rented properties in the traditional environment were very high and did not cause damage to such properties. Through lease arrangements many houses in traditional environment were converted to other functions. This conversion improved the traditional environment and allowed a confirmative response with desires of users meeting their demands and still in a harmony with the environment.
- The owner shall be responsible to provide all that is necessary to utilise the building such as walls, doors and whatever essential for the utilisation of the building. Also he will be authorised to provide water well with its maintenance. Electricity may be included in the utilisation requirements nowadays.
- In cases where a tenant loses his privacy from his neighbours, the tenant has the right to cancel the contract if he so wishes.
- Customs known at the traditional environment decided the responsibilities of both the owner and the tenant according to what is necessary for utilisation and what is complementary, for instance it is the responsibility of the tenant to save furniture and other complementary things, which will complete the utilisation of such property. The owner is responsible for the safety of the building (wall, ceilings and drain spouts etc.) and the tenant is responsible for using such elements and maintaining them.
- Therefore the Muslims use of the leased properties in the traditional environment was very common and did little damage to it. Consequently the traditional environment remained intact for a much longer duration.

CHAPTER NINE

Al-Hareem, Al-Tareeqh Al-Maytaa and Al-Muhtassib

9.0 Introduction

This chapter discusses the importance of the Hareem, Tareeqh Al-Maytaa and Al-Muhtassib in the Islamic legal system. It also discusses the role of the Hareem, Tareeqh Al-Maytaa and Al-Muhtassib in the Islamic legal system.

9.1 The Hareem, Tareeqh Al-Maytaa and Al-Muhtassib

The Hareem, Tareeqh Al-Maytaa and Al-Muhtassib are three important concepts in the Islamic legal system. The Hareem is the area around the Kaaba in Mecca, which is considered sacred. The Tareeqh Al-Maytaa is the path leading to the Kaaba, and the Al-Muhtassib is the person responsible for maintaining the Hareem and the Tareeqh Al-Maytaa.

Al-Hareem is the area around the Kaaba in Mecca, which is considered sacred. It is the area where the Kaaba is located, and it is the area where the pilgrims perform their rituals. The Tareeqh Al-Maytaa is the path leading to the Kaaba, and it is the path that the pilgrims follow when they enter the Hareem. The Al-Muhtassib is the person responsible for maintaining the Hareem and the Tareeqh Al-Maytaa. He is the person who ensures that the Hareem and the Tareeqh Al-Maytaa are kept in good condition, and he is the person who ensures that the pilgrims are able to perform their rituals safely and comfortably.

The Hareem, Tareeqh Al-Maytaa and Al-Muhtassib are three important concepts in the Islamic legal system. The Hareem is the area around the Kaaba in Mecca, which is considered sacred. It is the area where the Kaaba is located, and it is the area where the pilgrims perform their rituals. The Tareeqh Al-Maytaa is the path leading to the Kaaba, and it is the path that the pilgrims follow when they enter the Hareem. The Al-Muhtassib is the person responsible for maintaining the Hareem and the Tareeqh Al-Maytaa. He is the person who ensures that the Hareem and the Tareeqh Al-Maytaa are kept in good condition, and he is the person who ensures that the pilgrims are able to perform their rituals safely and comfortably.

CHAPTER NINE

Al-Hareem, Al-Tareeqh Al-Maytaa and Al-Muhtassib

9.0 Introduction

This chapter discusses the impact of other concepts which affected the formation of the Islamic City. These are *Al-Hareem*, *Al-Tareeqh Al-Maytaa* and the concept of *Al-Muhtassib*.

9.1 Meaning of *Al-Hareem*

Al-Hareem covers whatever is necessary to vitalise land. This includes all facilities required for the land's vitalisation at the time the process begins.

Al Souti (1959, vol.1, p.134) pointed out that *Al-Hareem* of inhabited areas can not be owned through vitalisation, although they are needed for it. Examples of *Al-Hareem* are: whatever in the vicinity of inhabited areas and is beneficial for the property, i.e. roads, water resources (*Al-Majraa* and the well), garbage area, tools storage areas and soil (for more details review Al-Mawirdi, 1960, p. 176). These are not available for any person to vitalise, and this is agreed upon by all doctrines (Ibn Qudama, 1970, vol.5, 566, 567, also Ibn Rajab, 1933, p.192).

The same holds for the things beneficial to society such as: courtyards, grazing areas, places for gathering firewood, water resource locations, wells, rivers, spring, etc. This applies to every owned property, after the Prophet's Hadith ﷺ "Whoever vitalised dead land in no Muslims right, it is his own". In other words, if something is connected to the right of a Muslim and pertains to his property, if the law allowed its vitalisation, it would nullify the original ownership. It is thus named *Al-Hareem* because it is not allowed for anybody to prevent its user from it, nor for anybody to monopolise it (Ibn Manzoor, 1965, vol.1, p.617, see also Al-Souti, 1959, vol.1, pp.134-143) (see figure 9.1).

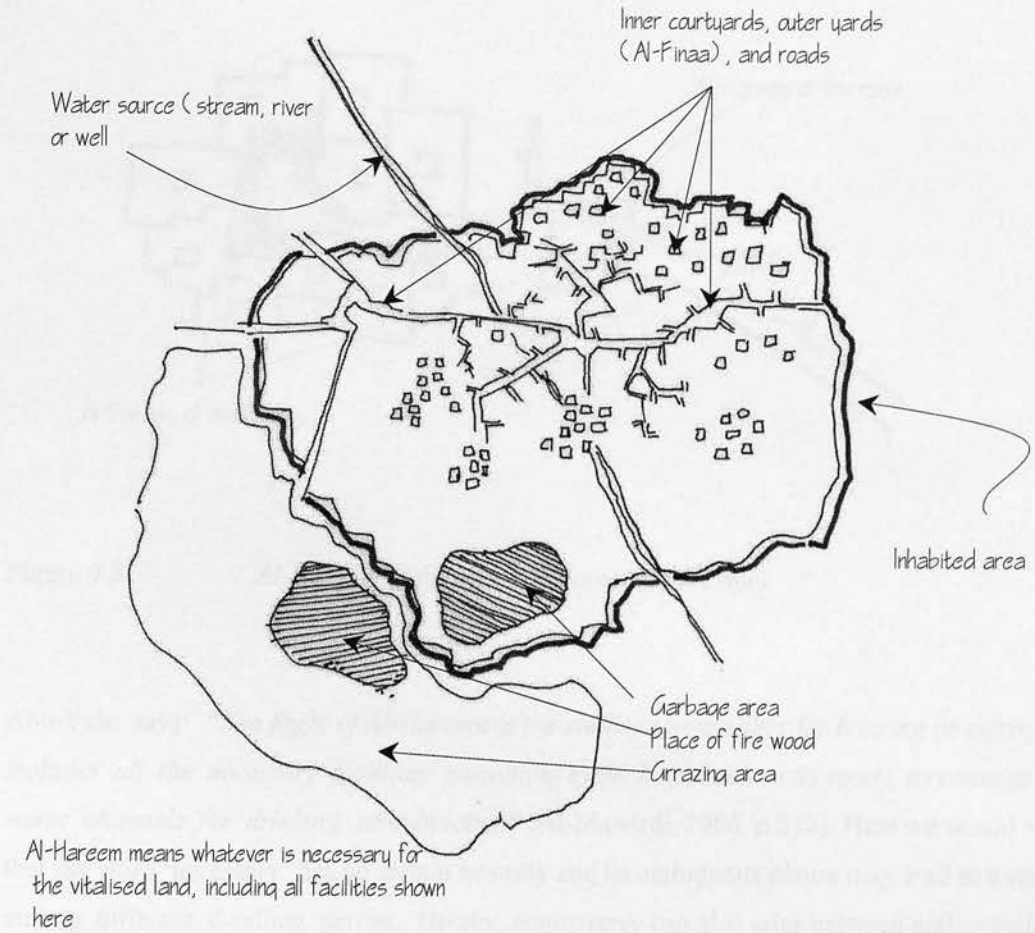


Figure 9.1 The Concept of *Al-Hareem* in the Traditional Environment (Source: the Author).

9.1.1 Environmental Examples of *Al-Hareem*

The next few examples of different types of *Al-Hareem* show the deep integration of the concept of *Al-Hareem* in the formation, planning and design of the Islamic Traditional City.

9.1.2 *Al-Hareem* of the House and the Agriculture

On the authority of Ibn-Wasil Al-Kilabi, it was said: “*And the Hareem of the house is whatever is by the entry of the house and what is outside is the outer courtyard (Al-Finaa). And the Hareem of the house is whatever added to it and becomes of its rights and facilities*” (Al-Souti, 1959) (see figure 9.2).

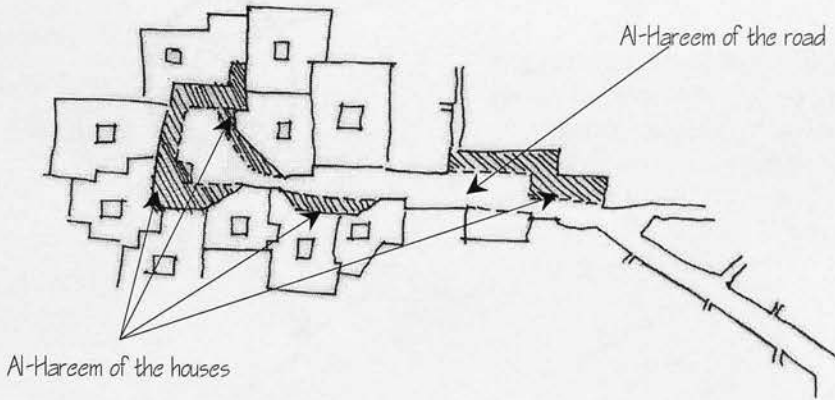


Figure 9.2 *Al-Hareem of the House* (Source: the Author).

Abu-Yala says: “*The Right of Al-Hareem of the vitalised land either for housing or cultivation, includes all the necessary facilities pertaining to the land, such as its roads, its courtyard, its water channels for drinking or cultivation*” (Al-Mawirdi, 1966, p.212). Here we would notice that the word ‘necessary’ has no certain quantity and its ambiguous nature may lead to a conflict among different dwelling parties. Hereby, controversy can also arise between earlier residents and those who followed after them who wish to further vitalise the land. They then would need to determine the specific rights of *Al-Hareem*, which means determining each *Hareem*’s location, area and property. That means that every new owner must ascertain where the road is, what is its direction, and what is its extent, who is allowed to pass through the property and has the right to prevent any building on it because it is a right of way. The property is hereby subject to the previously mentioned principles of *Ihya’a* and *Al-Irtifaqh* with its various rights like the Right of *Al-Moroor*, *Al-Majraa* and *Al-Maseel* and the likes, because these decide *Al-Hareem* and its areas. Based on priority basis of vitalisation among neighbouring parties, *Al-Tareeqh* (the road) or *Al-Amer* (the inhabited plots), *Al-Majraa* (the water source) and *Al-Maseel* (the roof drainage) may be determined.

This tells us that those who made the decisions about the location of roads were among the dwellers and these groups were comprised of either relatives or members from one tribe or were at least neighbours. Due to religious codes of behaviour toward relatives and neighbours, we can conclude that the rights of *Al-Irtifaqh* and the right of *Al-Hareem* resulted from agreements based upon *Shari’a* principles (see figure 9.3).

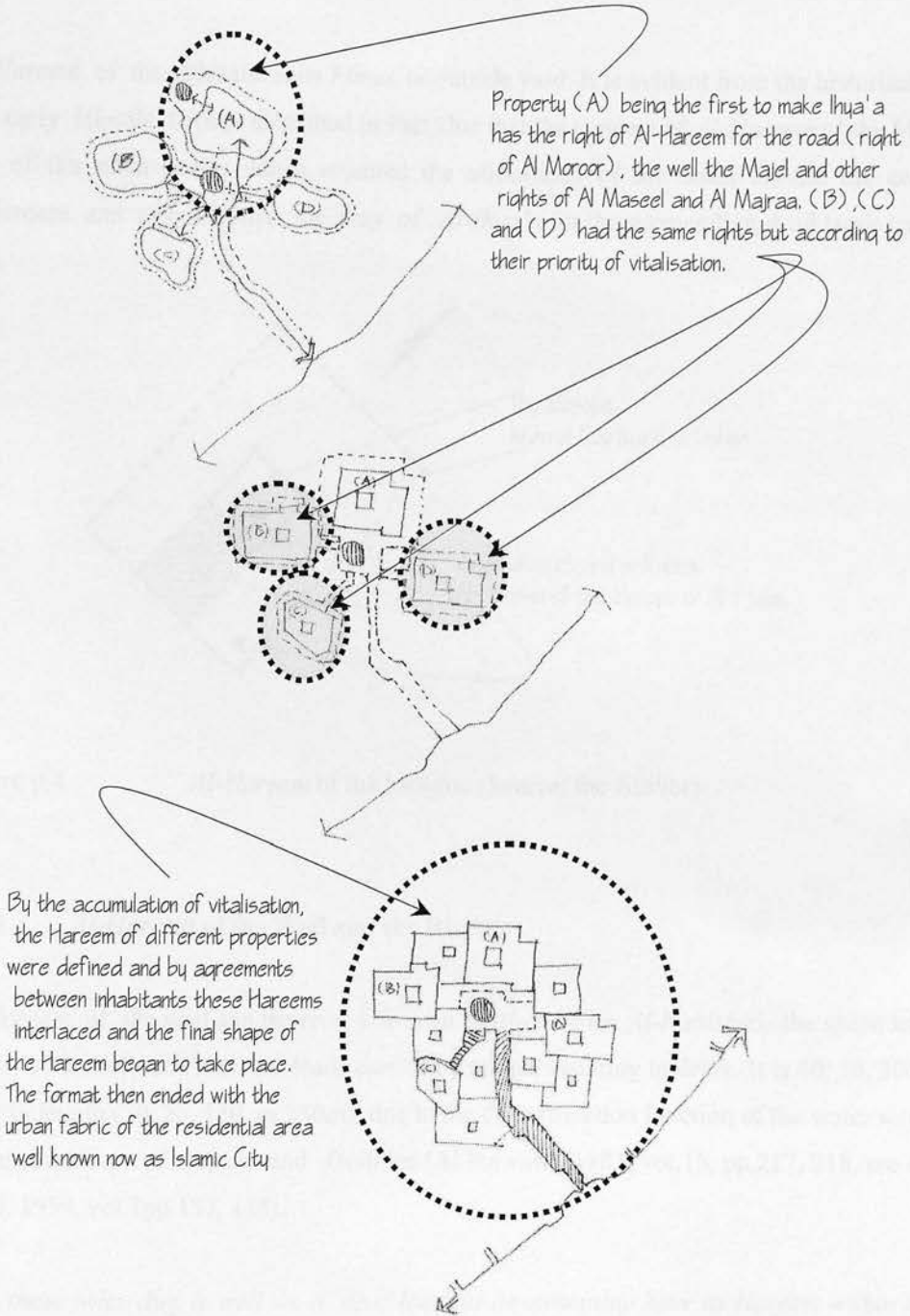


Figure 9.3 The Integration of Different *Hareems* Bring out the Road Network and the Urban Fabric of the Residential Areas (Source: the Author).

9.1.3 *Al-Hareem of the Mosque*

Al-Hareem of the Mosque is its *Finaa*, or outside yard. It is evident from the historical texts of the early Islamic Cities described in Part One that the concept of *Al-Hareem* of the Mosque is one of the main basics which oriented the allocations of the lands around the centre of a settlement and also affected the way of *Al-Ihya'a* for the surrounding dead lands (see figure 9.4).

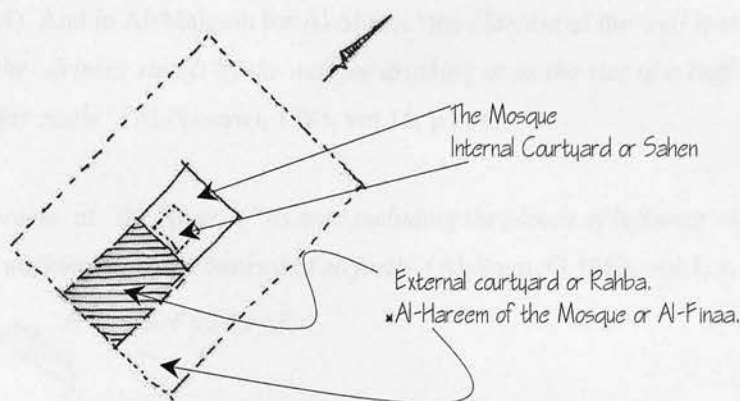


Figure 9.4 *Al-Hareem of the Mosque* (Source: the Author).

9.1.4 *Al-Hareem of the Well and the River*

Al-Hareem of the well and the river is known as *Al-Nabisha*. *Al-Nabisha* is the space left in the banks of a well or river for loads carried by animals coming to drink. It is 40, 50, 300 or 500 arms in length (20, 25, 150, or 250m), due to the diversification function of the water source and its surroundings of objects and facilities (Al-Nawawi, 1983, vol.15, pp.217, 218, see also Al-Souti, 1959, vol.1pp.137, 138).

"All those who dug a well in a dead land for its ownership have its *Hareem* within 40 arms around it or 25 arms on each side or 50 arms, whichever length is farthest of its *Hareem* ... the normal *Hareem* of well is 50 arms...the *Hareem* of well for Agriculture is 300 arms, in overall circumference" (Al-Nawawi, 1983, vol.15, p.217). So it is clear that there is *Hareem* for the well and it differs according to its type, use and area (see figure 9.5).

Al-Nawawi then added in page 218: "If a well was dug for *Al-Atan* [drinking for people and maybe their animals] its *Hareem* is 40 arms. If it was for *Al-Nadeh* [animals which pull the

water from the well] its Hareem needs to be 60 arms and if it is a spring, its Hareem is 500 arms from all sides" (see figure 9.6).

"For a well dug in dead land its Hareem is the area required in which the consumer of water and his containers and cattle, pouring of water and the area of shepherds to water the cattle and plants from basins and the like including the places of left-over materials and all of these are unlimited but in accordance with what is needed as said by Al-Shafei" (Al-Souti, G.1983, vol.1, p.134). And in Al-Majmoh for Al-Shafei "the Hareem of the well is measured as the area in which the drinker stands by the well for drinking or as the size of a buffalo when it passes if the well is for cattle" (Al-Nawawi, 1983, vol.15, p.214).

The Al-Hareem of the River is "its mud including the places of left-over materials and what is needed for walking along its banks and so forth" (Al-Souti, G.1983, vol.1, p.135).

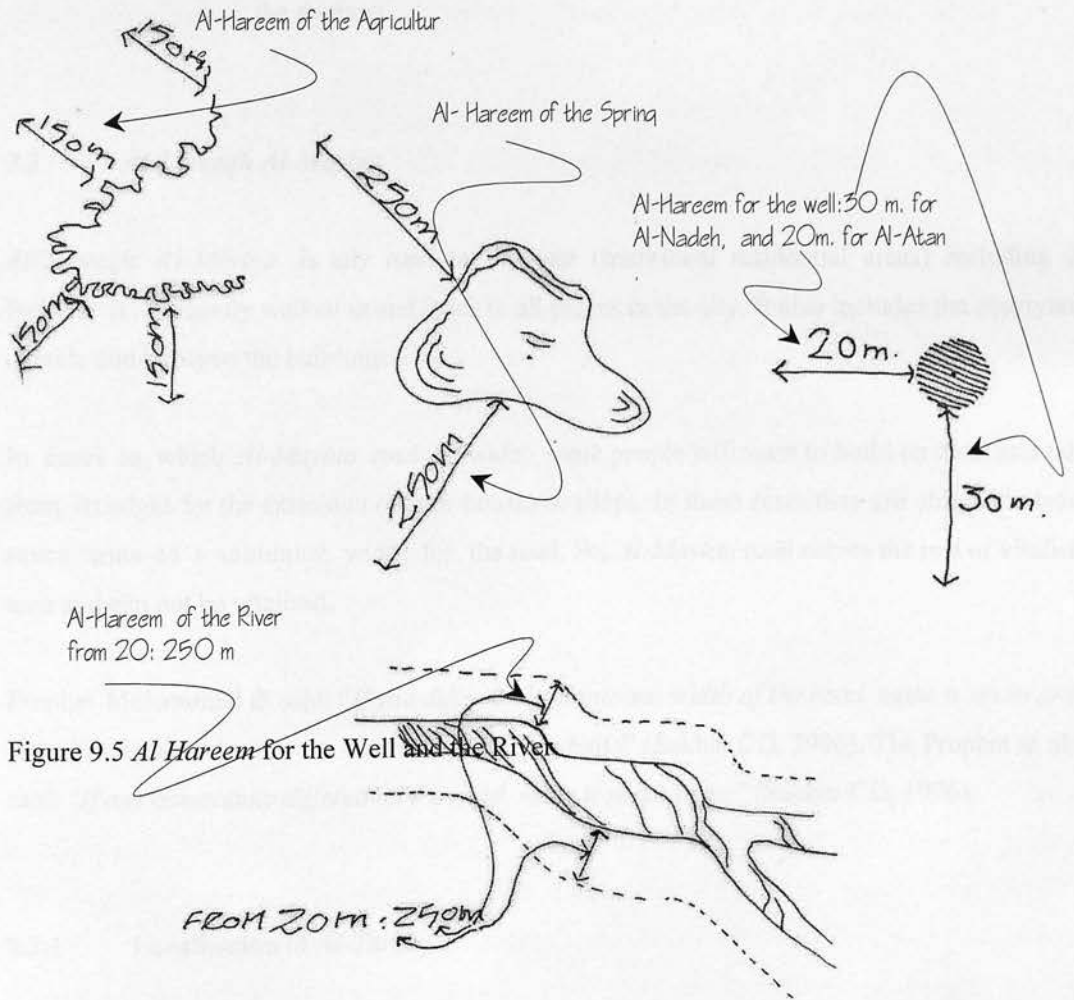


Figure 9.5 Al-Hareem According to the Different Juristic Opinions (Source: the Author).

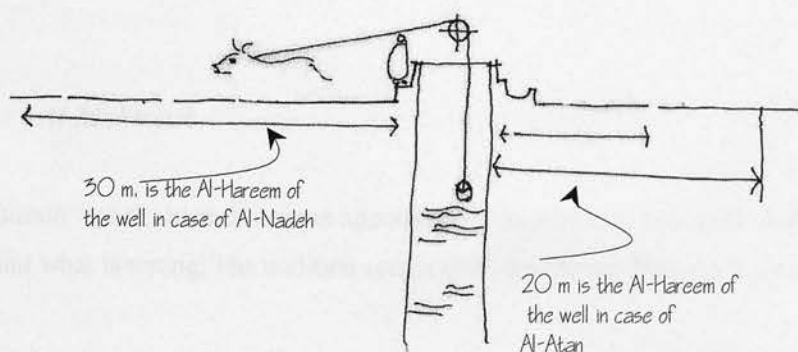


Figure 9.6 *Al-Hareem* of the Well According to the Opinion of Al-Nawawi (Source: the Author).

9.2 *Al Tareeqh Al-Maytaa*

Al-Tareeqh Al-Maytaa is any road in *Al-Amer* (traditional residential areas) including its feeders. It is heavily walked in and leads to all places in the city. It also includes the courtyards outside and between the buildings.

In cases in which *Al-Maytaa* road is wide, some people will want to build on them and take from its edges for the extension of their houses or shops. In these cases they are obliged to leave seven arms as a minimum width for the road. So, *Al-Maytaa* road serves the rest of vitalised area and can not be vitalised.

Prophet Mohammed ﷺ said: “If you differ in the minimum width of the road, make it seven arms [the Arabic arm is said to be 63cm] and then build” (Sakher CD, 1996). The Prophet ﷺ also said: “If any community differed on the road, make it seven arms” (Sakher CD, 1996).

9.2.1 Localisation of *Al-Tareeqh*

“If a road has been utilised by people and becomes a passage for them, nobody may take or own any of it whether little or big. That means the constant passage of people has already

determined its location [the Hareem of the road] and its width has become clear by what has been built on both sides” (Abu Yala, 1966, p.213).

9.3 *Al-Muhtassib*

Al Muhtassib was the man or woman appointed by the authority to enjoin what is good and right and forbid what is wrong. The tradition comes from the Quran, from verses such as:

“Those who devour usury will not stand except as stands one whom the Evil One by his touch hath driven to madness. That is because they say: ‘Trade is like usury’, but Allah hath permitted trade and forbidden usury. Those who, after receiving direction from their Lord, desist, shall be pardoned for the past; their case is for Allah [to judge]; but those who repeat [the offence] are Companions of the Fire; they will abide therein [forever]” (Quran, Surat Al-Baqara, ver.275).

“Let there arise out of you a band of people inviting to all that is good, enjoining what is right and forbidding what is wrong: they are the ones to attain felicity” (Quran, Surat Al-Imraan, ver.104).

“Woe to those that deal in fraud, those who, when they have to receive by measure, from men, exact full measure but when they have to give by measure or weight to men, give less than is due” (Quran, Surat Al-Mutafifeen, ver.1-3).

Prophet Mohammed ﷺ also said, *“Who cheated us is not one of us” (Sakher CD, 1996, Muslim, no.146).*

9.3.1 Role and Responsibilities of *Al-Muhtassib*

Al Muhtassib had a very important role in the traditional environment especially in two places: markets and the public roads. In the market, *Al-Muhtassib* oversaw the appointment of places for different types of merchandise like the places for perfumeries, spice dealers and the butchers. By this he gathered all professionals together, each in his specific place. *Al-Muhtassib* also prevented individuals from disturbing the road or markets by building what may narrow the road such as building *Al-Rawashen* and *Al-Sabataat* (bay windows) or throwing the remains of food, dirt, waste or the likes on the road. The duties included taking care of Mosques and their

courtyards and ordering that people who threw litter there were punished. Supervision of the streets and markets of Muslims kept them neat, clean and adequately wide and prohibited cheating by merchants.

Other tasks covered the collecting of *Zakat* (alms), taxes the likes of fees for the state (Labidous, Ira, 1967, pp.98-99) and responding to help any caller who might be in need of help. For this *Al-Mawirdi* highlights that *Al-Muhtassib*, although appointed by the Government, has his own point of view about conventions such as seats in the market and house extensions but this does not include religious law and jurisdiction (for more details about the responsibilities of *Al-Muhtassib* review Abu Yala, 1966, pp.282-285).

For *Al-Muhtassib*, central interference and instruction was only in the framework of convention. *Al-Muhtassib* had no right to interfere between the inhabitants automatically but only when someone who was involved in a dispute asked him to. *"As for those who deny the rights of human beings, like those who oppress their neighbours, limits, or exceed their Hareem or put excess tree wood on his wall, this raises no objection from Al-Muhtassib even if his neighbour retaliated. But if the dispute continues, Al-Muhtassib has every right to review the situation and punish the oppressor. If dispute continues, they must appeal to the Judge / Governor who has the right to decide"* (*Al-Mawirdi*, 1960, p.255).

The right of *Al-Muhtassib* prevented the sellers of the Market to project *Mastaba* (fixed or movable tables used for sitting or selling) from their shops beyond the legal overhang because this is an oppression on the passers-by. If the work implied a fire to be used as a forge, bakery or oven, *Al-Muhtassib* had every right to keep these shops away from other professionals to avoid any anticipated harm (for more details see *Al-Sanami*, 1983, pp.206, 207).

The limits that *Al-Muhtassib* could enforce concentrated on the acts of individuals who sought to utilise the road and maintain its cleanliness and safety, rather than preventing construction which may reform the road. In other words: prohibiting brothels, night-clubs and similar disreputable urban activities or uses.

Interference of *Al-Muhtassib* could also be applied to construction workers who took advantage of building owners who do not know the construction specifications, though this interference was only from a technical point of view.

9.4 Conclusion

- From the previous review of *Al-Hareem* the scholars have agreed upon the invocation of *Al-Hareem* for every act of vitalisation. It is prohibited to vitalise the *Al-Hareem* of any vitalised land because the *Hareem* pertains to the vitalised land. Whatever is needed for the inhabited facilities, such as wells, front house courtyards, roads and water sources or flow cannot be vitalised because these things pertain to the inhabitants and can never be owned by vitalisation. In other words, these items are the necessary facilities for those who vitalised dead land, such as roads and courtyards (courtyards are the area in vicinity and adherent to the house on road). This can not be vitalised by others without the approval of those who are benefited by that *Hareem*.
- From what was referred to in *Al-Tareeqh Al-Maytaa* we may conclude that owners of buildings determined the public ownership of urban elements such as roads.
- The ways in the informal areas were utilised by dwellers for obtaining their things, such as going to the market, Mosques, farms or well and rivers and their playgrounds. Because the courtyards on the road constitute the remaining dead lands that could be vitalised, prohibition of vitalisation in the road was necessary to assure public access, but this did not prohibit the use of the upper levels of buildings that projected beyond the street.
- These principles determined the main features of public areas, their locations and directions. Therefore, the decisions made by the inhabitants themselves became the driving force that brought shape to the road networks in the traditional environments. In this way the road network was a direct response to numerous factors, hypotheses and requirements which merged to become the knowledge of the inhabitants themselves. The following factors therefore responded to location and geography, social relationship of neighbours, water resources, availability of construction materials, direction of winds and constraints applied by the different vitalising parties.
- These constraints tightened the parties' actions and obliged them to deal with other existing rights of *Al-Hareem* consciously from the point of view of their roads and water resources.
- That means that any new vitaliser was obliged to respect all previous decisions made by the previous ones. Consequently, vitalisation led to the accumulation of decisions which date back to the first act of settling land and the setting of the parameters for the first building in

the settlement. In this way, one can understand how the Islamic City fuses the two opposing motives of change and constancy to create a dynamic continuity.

PART THREE

Section Two

Description of the Traditional Islamic Cities

Al-Finaa

CHAPTER TEN

*Al-Finaa***10.0 Introduction**

In traditional Islamic Cities, the roads are narrow, zigzagging and twisted and include numerous cul-de-sacs. Courts and areas crowded with sellers seem to be scattered here and there without a clear discipline. *Sabataat* (passages crossing over streets) extend over some roads, *Rawashen* (bay windows) and other extensive elements protrude from houses into the roads. Belongings of the inhabitants are sometimes strewn on *Al-Finaa* outside their houses and seem to occupy the public areas and streets, thus narrowing the roads. Are all the above points due to negligence when compared with tidier societies? This question is what this chapter attempts to address.

The Islamic traditional environment emerged with recognisable ownership characteristics in four distinguished areas.

- *Al-Hemaa* (protected places / pastures)
- Private land ownership as in *Al-Finaa* (outer courtyards of the houses).
- *Al-Aswaqh* (markets).
- Public ownership of areas is of two general types: *Al-Sahat* (singular *Al-Saha* which means an open area) and *Al-Toroqh* (singular *Al-Tareeqh*) meaning streets which in turn are further divided into two main categories: *Tareeqh Al-Muslimeen* meaning (public and main streets) and *Al-Darb* or *Al-Hara* meaning dead-end streets or cul-de-sacs (see figure 10.1: 10.6).

Al-Hemaa was a characteristic feature of traditional Islamic Cities, but it had little direct effect on the formation of the urban fabric within the traditional environment.

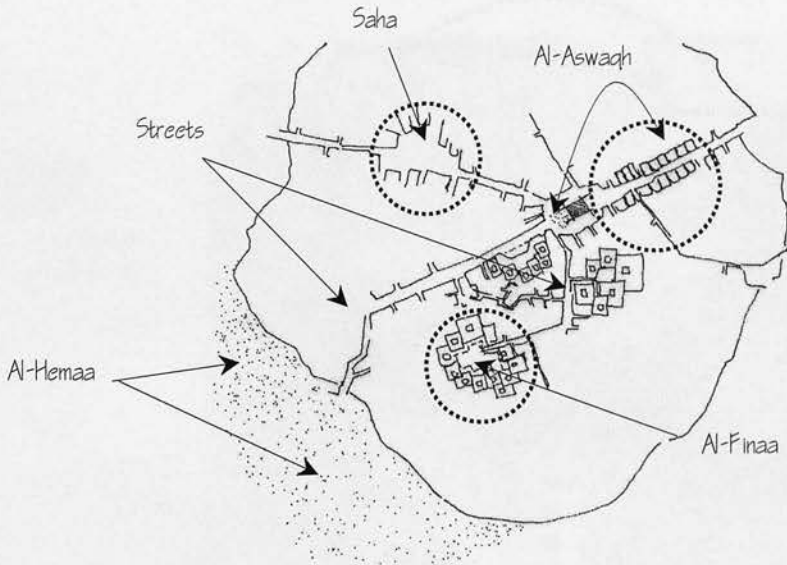


Figure 10.1 A Hypothetical Construction for the Four Distinguished Areas in the Traditional Islamic City (Source: the Author).

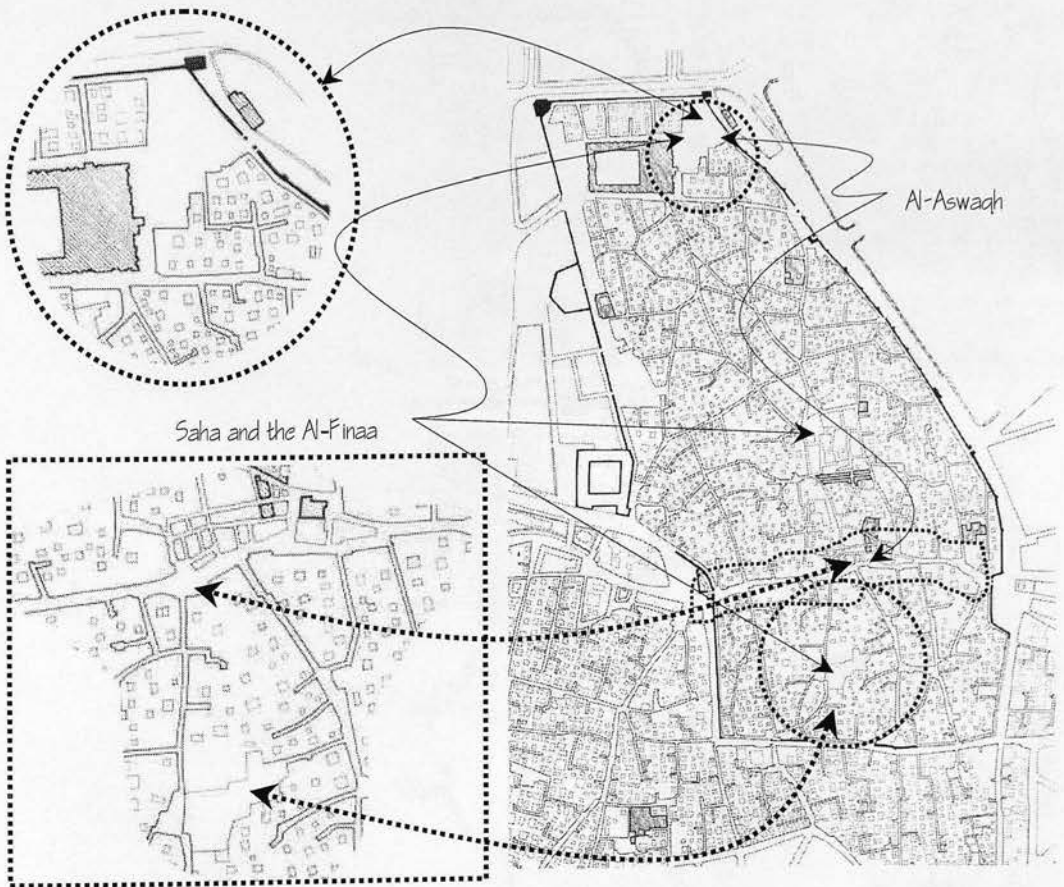


Figure 10.2 The Four Recognisable Characteristics were Repeated in Qerawan (Source: James Steele, 1992, p.77).

The Islamic traditional environment emerged with recognisable characteristics in four distinguished areas.

Markets

Al-Finaa

Streets

Al-Hemaa

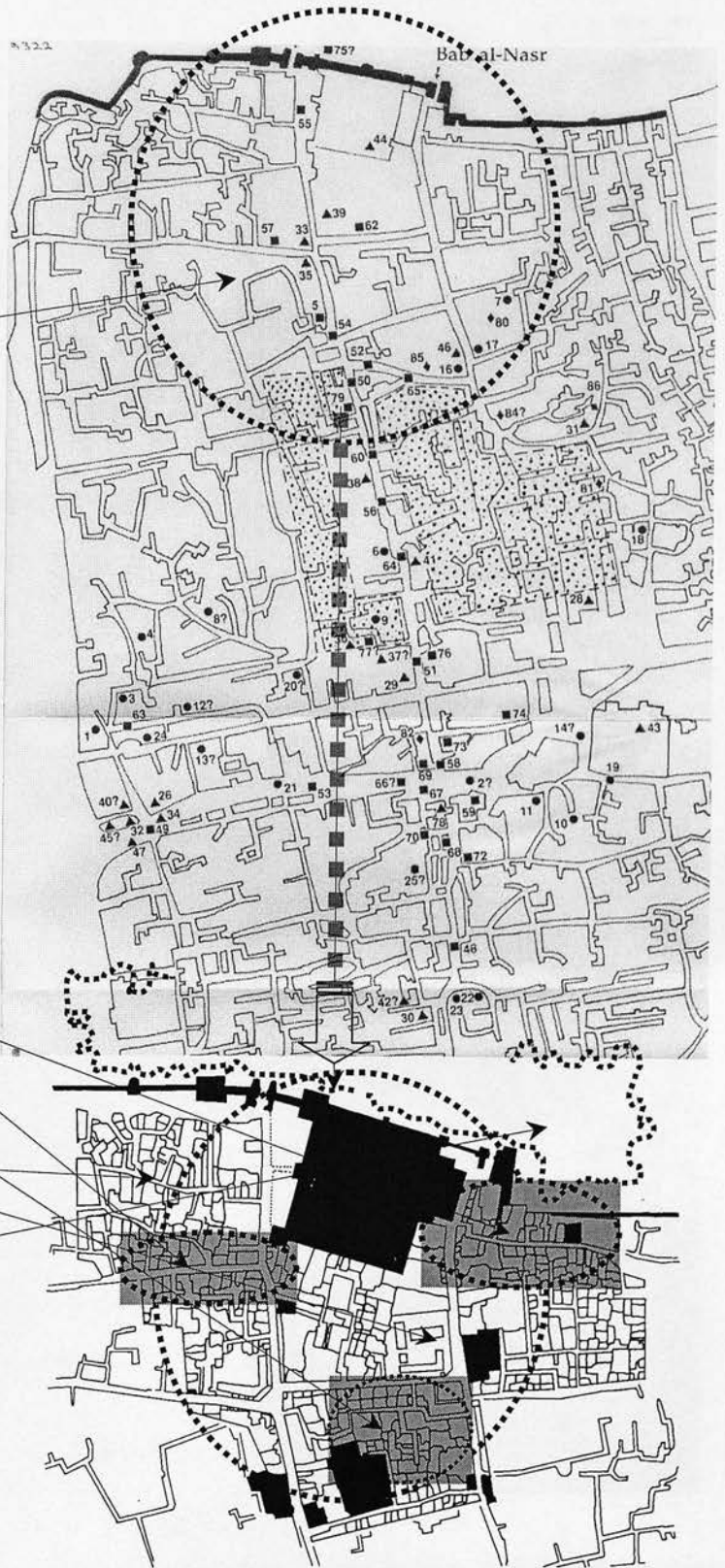


Figure 10.3

The Four Distinguished Areas were also repeated in the Traditional City of Cairo (Source: Abdul Baqi I., 1991, p.35).

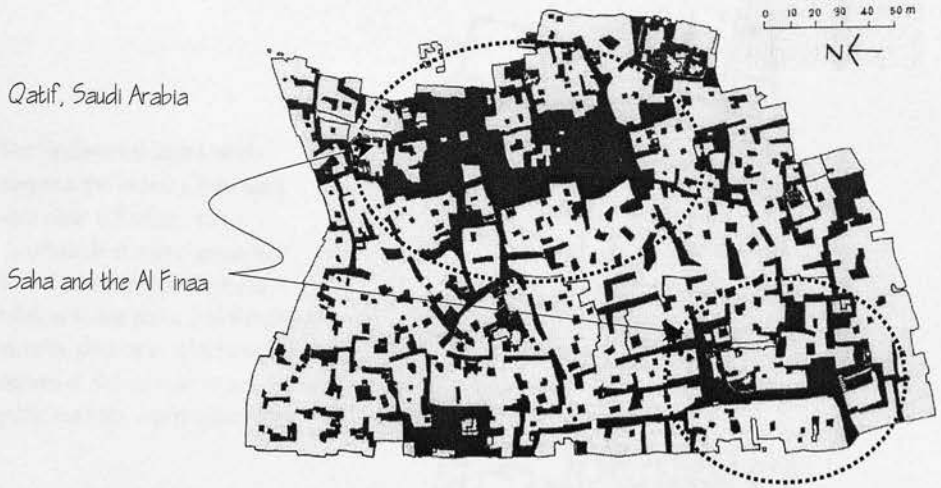


Figure 10.4 Same Configuration in Al Qatif (Source: Shelter in Saudi Arabia, p. 84).

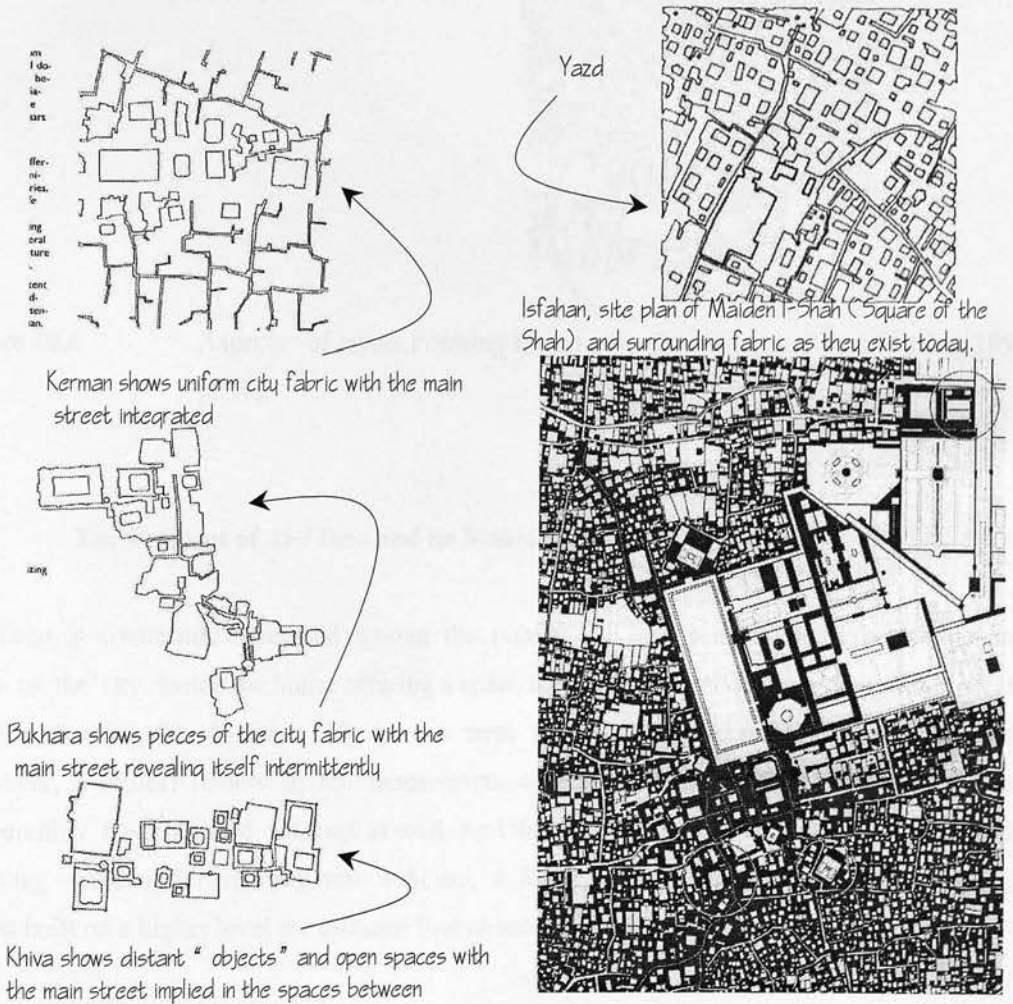


Figure 10.5 The Urban Fabric of the Old Cities in Iran Reflects Very Clearly the Same Configuration of the Traditional Islamic Environment (Source: Klaus Herdeg, 1990, pp. 13, 57).

The fundamental layers which compose the Islamic Cities were very clear in Kerman, Iran. Courtyards of every space with their *Finaa*, streets which are related to the public and the private streets which are related to the owners of the cul-de-sacs, public markets and private shops

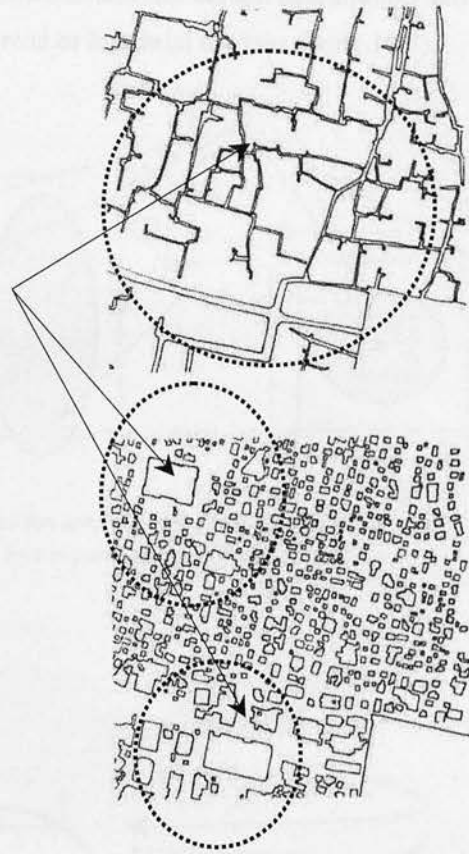


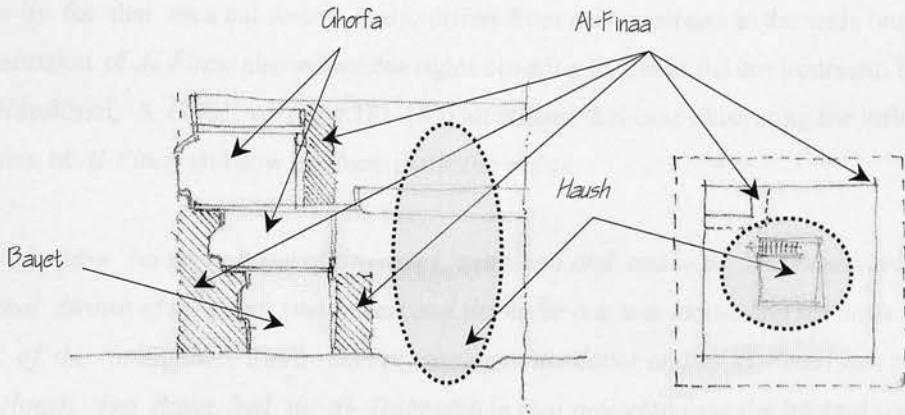
Figure 10.6 Aspects of layers Forming the Islamic City (Source: Klaus Herdeg, 1990, p. 37).

10.1 The Concept of *Al-Finaa* and its Meaning

Al-Finaa is commonly discussed among the public and even scholars and experts as an area open to the sky inside the house offering a space for relaxation and privacy. But this is not the precise meaning for *Al-Finaa*. The proper term for the courtyard inside the house is *Haush*. However, a critical review of the manuscripts, cases and language books show that *Al-Finaa* had another meaning and concept as well. And that is the open area in front of and around the building, whether the building was a house, a *Bayet* (room in the ground floor) or a *Ghorfa* (room built on a higher level for instance first or second floor) in the house itself.

In *Lisaan al Arab*, Ibn Manzoor (1965, vol.2, p.1138) said “*Al-Finaa is the open area at the front doors of the houses; and the house Finaa is whatever extended around it*”. So it is the courts or yards at the gates of the houses or the outdoor areas that extend from its sides. *Al-*

Finaa is the place adopted for use by the inhabitants for certain outbuildings and adjoined to it, whether these are for residential, commercial or industrial use (see figure 10.7).



In this example the upper Ghorfa has its own area of the Al-Finaa, the Bayet has also its Finaa. From outside the house has its own parameter of Al-Finaa.

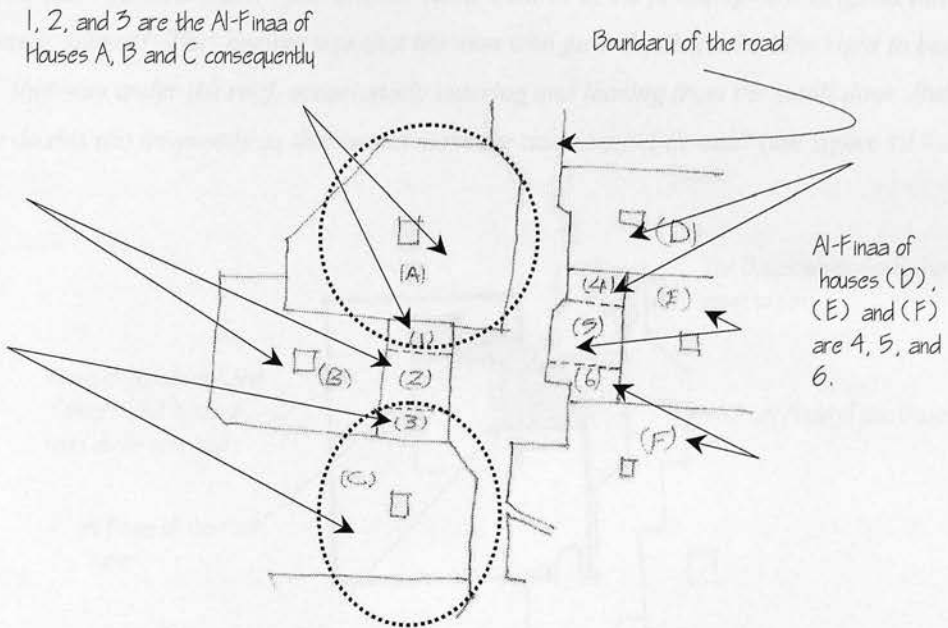


Figure 10.7 Concept of *Al-Finaa* and its Location Inside and Outside the House (Source: the Author).

10.1.1 The Location of *Al-Finaa* and its Rights

Al-Finaa is a space defined by clear rights regarding appropriate use that was accepted by the Islamic societies living in traditional environment. Ownership rights of *Al-Finaa* gave the owner

rights of behaviour and disposal which differ according to the site and location of each of the *Al-Finaa*. For instance the right assigned to *Al-Finaa* which is located on a main road is not the same as for that on a cul-de-sac. It also differs from narrow streets to the wide ones. Thus, the demarcation of *Al-Finaa* also influences rights covering its use in the environment. For example Al-Wanshirisi, A. (1981, vol.5, pp.181-183) mentioned this case illustrating the influence of the location of *Al-Finaa* and how it affects particular rights.

“A man gave his son a Bayet of two doors, one small and one wide. The small door was at the internal Haush of the donor [the father] and the wider one was located on the main road. In the back of the house there was a room pertaining to the donor and its Al-Finaa was connected to the Haush. The Bayet had the Al-Tashreeba [a roof projected over the internal courtyard, see figure 10.8]. The son wanted to utilise the small door as the entrance and exit door and all of the area under the projected ceiling of the Bayet. The terms of the gift did not stipulate anything about utilisation, but had mentioned all utilities of the Bayet and all rights inside and outside it. Since this was the case, who should have control of the property - the original owner or the present owner? The answer was that the man who gave the Bayet had the right to benefit from all that was under the roof, occasionally entering and leaving from the small door. But he could not do this too frequently as that would make the access a cul-de-sac” (see figure 10.8).

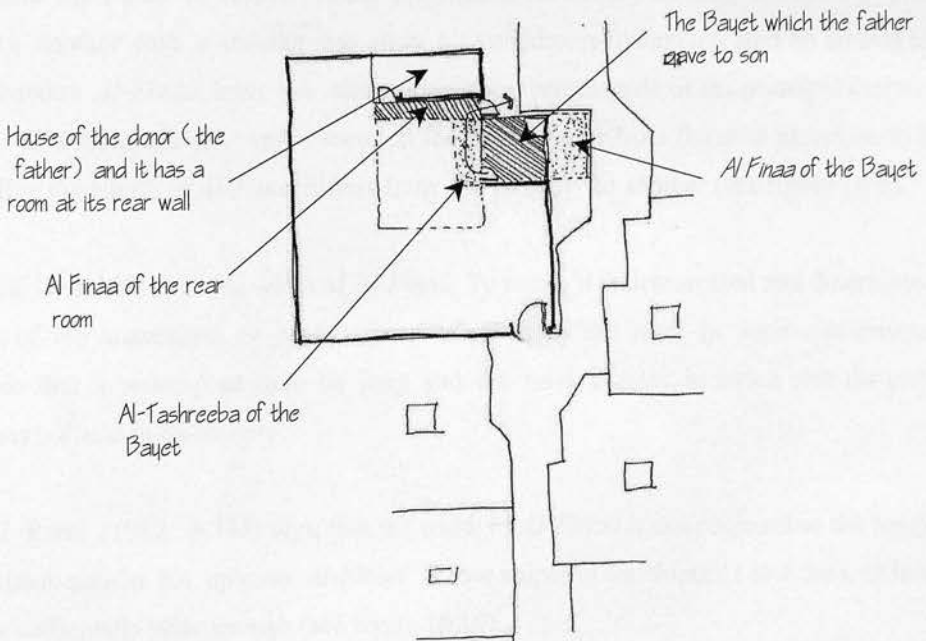


Figure 10.8

The Location of *Al-Finaa* and How it Affects its Rights (Source: the Author).

The lesson that can be acquired from this instance is that *Al-Finaa* describes the rights of utilisation of a property that is owned by another person. Thus it is an important concept in explaining rights of utilisation in the traditional urban environment.

Every *Finaa* has its own history and is unique in its origin and relationship with the surrounding parties. Therefore, it is important to understand how it was originally established.

10.1.2 The Establishment of *Al-Finaa* and its Dimensions

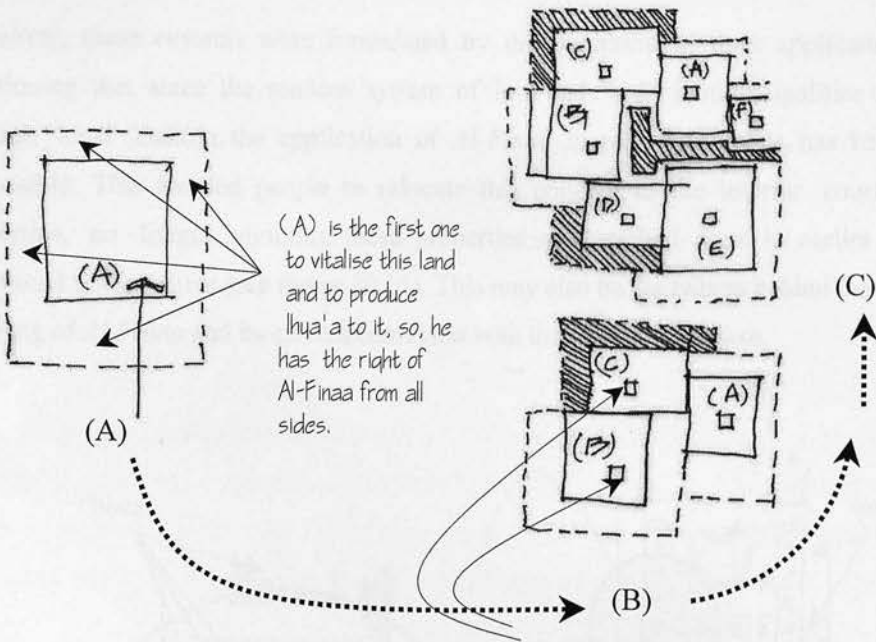
The establishment of *Al-Finaa* is connected to *Ihya'a* and legal precedence as well as to surrounding communities in general. The jurisdiction of *Al-Finaa* centres on the length of the wall adjoining the property on the side of its main entrance gate or door and other sides as well. The extent of its application can vary because of the individual *Ihya'a* circumstances in which it is applied. "*Al-Finaa does not belong only to the side of the main entrance door but, to all sides as well*" (Ibn Taymiya, 1986, vol.3, p.410).

For instance someone may vitalise certain land and demarcate its *Al-Finaa* on all sides; thereby asserting *Al-Finaa* on all sides. A man may allow his neighbour to vitalise the land next to it and relinquish his *Finaa* in respect to the new *Ihya'a*. As a result he may lose his *Finaa* from that side. In another case a dweller may allow his neighbours to develop land all around his house and abandon *Al-Finaa* from the three sides other than the side of the principal entrance to his house. This becomes the only *Finaa* left for him and runs from the door elevation to the road. Therefore the length of *Al-Finaa* differs from one property to another (see figure 10.9).

Opinion is divided as to the width of *Al-Finaa*. To some, it is demarcated and determined by the length of the waterspout or other water run-off from the roof. In such circumstances it is possible that a waterspout may be long and the road narrow, in which case the public road becomes a *Finaa* in its entirety.

Ibn Al Rami (1982, p.335) says, that the width of *Al-Finaa* is not confined to the length of the waterspout and in his opinion *Al-Finaa* is four shiper to six shiper (1 to 1.5m), as long as the road is sufficiently wide enough (see figure 10.10).

In this stage: by the accumulation of lhya'a the properties were attached and the length of Al-Finaa of each property was defined and the streets (here the cul-de-sac) was formulated.



In the second stage (B) then (C) vitalised the neighbouring land in sequence and has their Al-Finaa, by the permission of the owner of property (A) they took parts of his right of the Al-Finaa and built their boundary walls and had their Al-Finaa length on all sides as agreements took place.

Figure 10.9 Length of Al-Finaa and the Variation of its length According to the Agreements between Neighbours (Source: the Author).

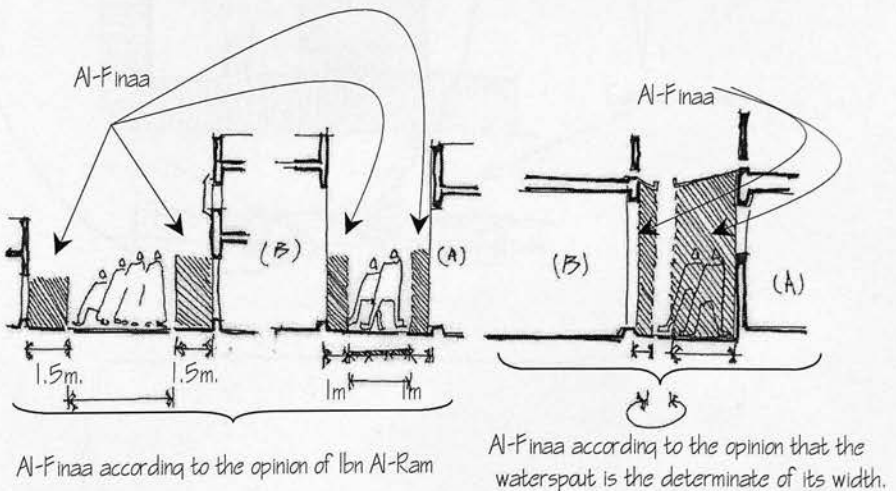


Figure 10.10 Measuring the Width of Al-Finaa (Source: the Author).

It is evident that the length and width of *Al-Finaa* are determined by a sort of agreement amongst dwellers in a particular location and are fixed according to the circumstances of each location.

Moreover, these customs were formulated by the repetition of their application. It is worth mentioning that since the modern system of law and order in municipalities did not evolve through local custom the application of *Al-Finaa* in regard to roads has become all but impossible. This has led people to relocate this concept to the interior courtyards of their properties, no longer adjoining these properties as they had done in earlier times in the traditional environment (see figure 10.11). This may also be the reason behind the change of the meaning of *Al-Finaa* and its current confusion with the idea of *Al-Haush*.

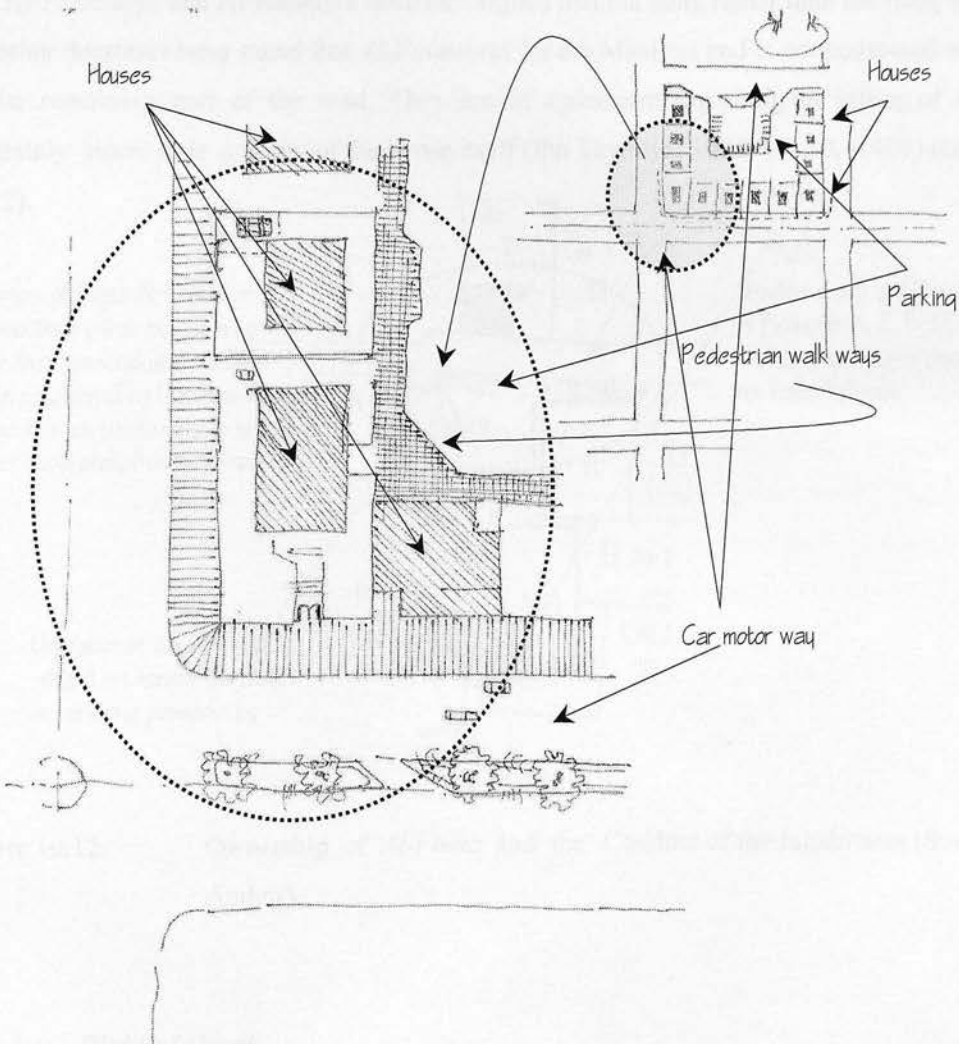


Figure 10.11 Disappearance of *Al-Finaa* in Our Modern Cities (Source: the Author).

10.2 Ownership of *Al-Finaa* and Conduct of the Inhabitants

The owner of the property owns the *Al-Finaa* adjoined to it. This *Al-Finaa* can be rented to others. “It [*Al-Finaa*] is owned by its owners” and this is the doctrine of Malik and Shafei. When Malik was asked about renting *Al-Finaa* to others in the road, he said: “If the road is narrow and *Al-Finaa* causes damage to Muslims they shall be prevented from using it, but if there is *Finaa* and its people utilise it and cause no damage in respect of the narrowness in the passage for Muslims, there will be no harm coming from the application of this legal principle” (Ibn Taymiya, 1986, vol.30, pp.407, 408). Ibn Rajab said: “The owner of the land shall be more entitled to its utilities than others. Therefore the user is more entitled to *Al-Finaa* than others, even if he does not own it” (Ibn Taymiya, 1986, vol.30, pp.408, 409).

The Al-Hanbaliya and Al-Hanafiya doctrines argued that the land, rather than the road, is owned but other doctrines have stated that *Al-Finaa* was for the Muslims and is not possessed or owned as the remaining part of the road. They are in agreement regarding the selling of *Al-Finaa* separately since it is a utility of the house itself (Ibn Taymiya, 1986, vol.30, p.409) (see figure 10.12).

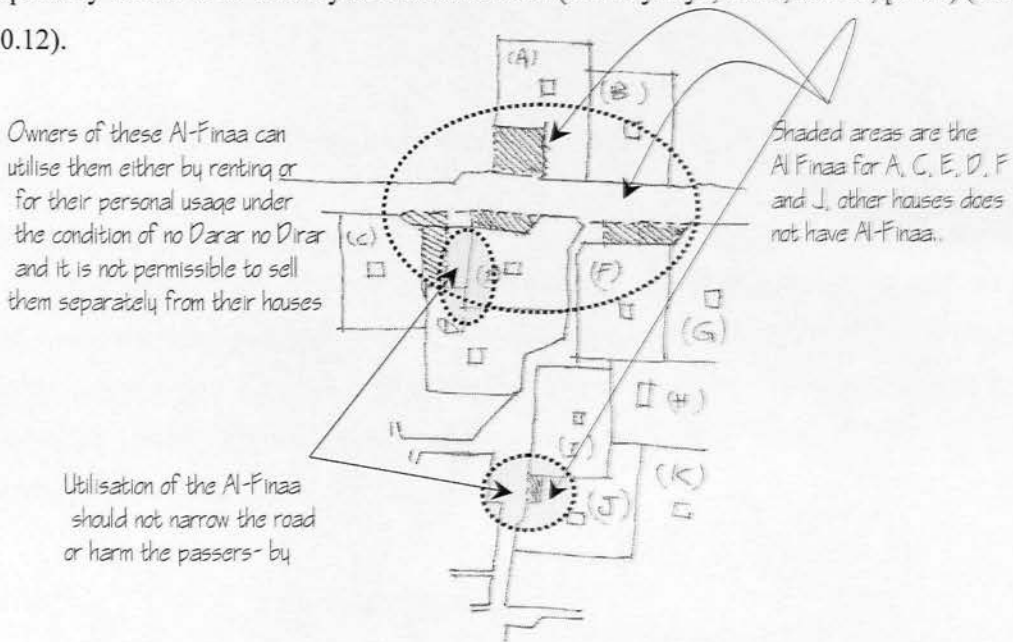


Figure 10.12 Ownership of *Al-Finaa* and the Conduct of the Inhabitants (Source: the Author).

10.2.1 Right of Usage

The owner of *Al-Finaa* shall be entitled to utilise his *Finaa* by sitting, shading, selling, storing

his belongings there, keeping his beast there and making other similar uses of the property, as long as there is no harm to pedestrians.

Prophet Mohammed ﷺ said: “ ‘Never sit in roads’ but they [his companions] said ‘We have no alternative place for our sittings, during which we talk’. He replied ‘If you come to sit you should give the road its right’. They said ‘What is the right of the roads?’ He answered ‘Casting down the eyes to a lower level, responding salaam, preventing to cause harm, enjoying what is right, forbidding what is wrong and of course, driving along it’ (Al-Bukhari, 1986, vol.3, p.385, Al-Sagestani, 1952, vol.4, pp.815-817). In this respect Ibn Maja added: “You must guide the lost one and help the needy” (Ibn Maja, 1953, p.212).

The book of Al-Ihlan mentions the opinion of Omar Ibn Al-Khattab in respect to the rights one can exercise in regards to *Al-Finaa*: “If what is behind *Al-Finaa* [i.e. the road] is large, he is entitled to exercise his rights because Omar Ibn Al-Khattab has ruled that *Al-Finaa* is for the house owners. He also said that *Al-Finaa* is part of the possession of each house in either its front or back” (Ibn Al Rami, 1982, p. 333).

10.2.2 Division of *Al-Finaa* Amongst inhabitants

Al-Malikiya did not permit the division of *Al-Finaa* in front of people’s houses on the roadside even if they had agreed upon its division because *Al-Finaa* represents a utilisation and benefit for all people. Sometimes the roads are crowded and full of people and animals and they need to pass through those *Al-Finaa*, which lie in front of the houses and gates of the inhabitants. Therefore owners are not allowed to make it narrow or change its state. Division of *Al-Finaa* in front of a house is not permissible (see figure 10.13).

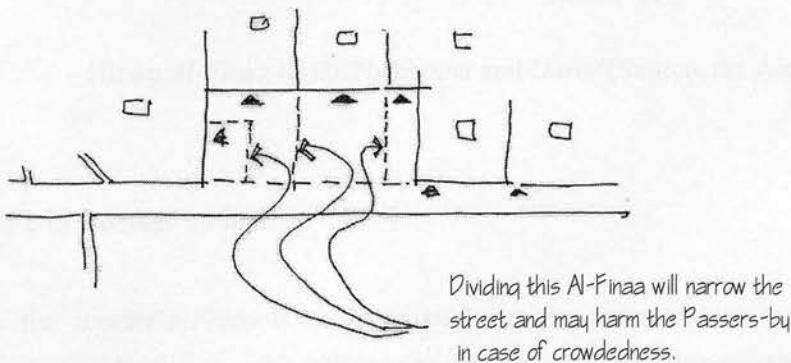


Figure 10.13 Division of *Al-Finaa* and its Impact on the Environment (Source: the Author).

10.2.3 Limits of Controlling the External Finaa

Limits of controlling the external *Finaa* basically depend on the concept of its ownership and on the rule of *Darar*, which the utilisation of the *Al-Finaa* will produce on the community.

On this, Ibn Rajab (1933, p.198) says: “*The utilities of properties presented in Al-Finaa and common alleys are permissible. It is also permissible to utilise them like the granting of permission to open a door*”. He continues on the next page: “*It becomes a sort of lending and the compensation is permissible as it would be for opening a gate, flowing water through a neighbour’s land, opening a door in his wall or fixing rafters to the wall and so forth. And this is directed by the understanding of ownership of such utilities*”.

Ibn Al Rami also states that “*Malik was asked about the situation when Al-Finaa was limited by a road edge. The neighbour wanted to hire it all or a part of it. Would they be allowed to do this since it is the Muslims’ road?*” He answered: “*If it is a narrow Finaa and something has been put in it causing harm to people in their road, then they cannot utilise it. However, if Al-Finaa is utilised by its people and doesn’t cause any distress nor harm to Muslims in their passage then it would be all right to do so*” (for more details see Ibn Al Rami, 1982, pp.335, 336) (see figure 10.14).

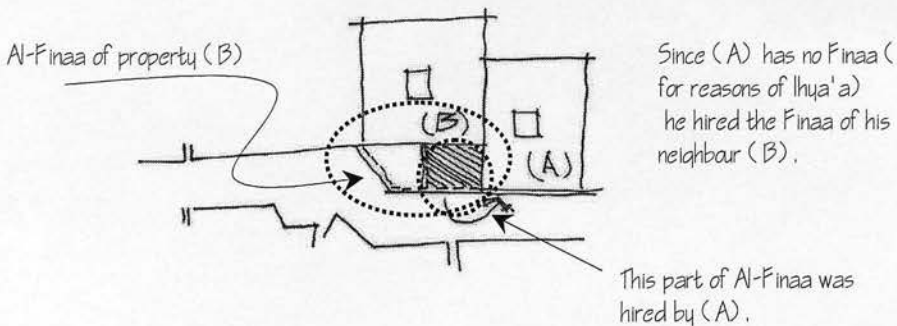


Figure 10.14 Hiring *Al-Finaa* by the Neighbour and *Darar* (Source: the Author).

10.2.4 *Ihya'a* of Another's Finaa

Vitalisation of the another's *Finaa* is not permissible in any form and this is stipulated by Ahmed (Al-Hanbaliya Doctrine), who tells of one who dug his well in his neighbour's *Finaa*. This was considered a sort of trespass equivalent to digging up another's property (see figure 10.15).

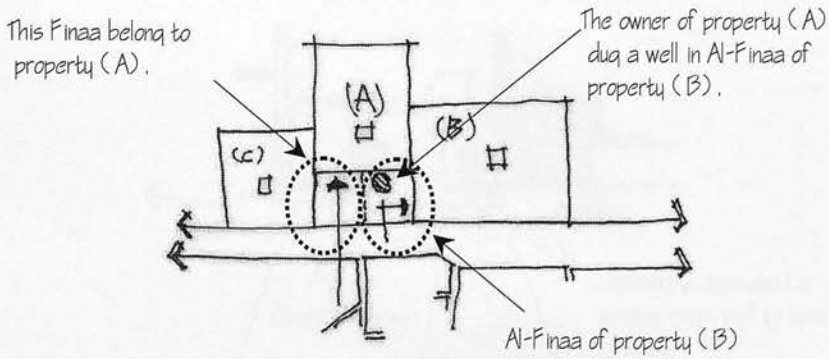


Figure 10.15 Ihya'a of Another's Finaa (Source: the Author).

10.2.5 Using Another's Finaa and The Permission of the Owner

The utilisation of *Al-Finaa* in a way that causes no damage to the owner, like for shading, is permissible without obtaining the permission of the owner of the *Finaa*. If the *Finaa* is demarcated by *Al-Tahjeer* or the utilisation of it causes damage to the owner, the permission of the owner is necessary (see figure 10.16).

This type of *Al-Finaa* is accessible by the people and it can be used by them in any way not causing damage to the owner (i.e. in shading and passing through it at times when the street becomes crowded).

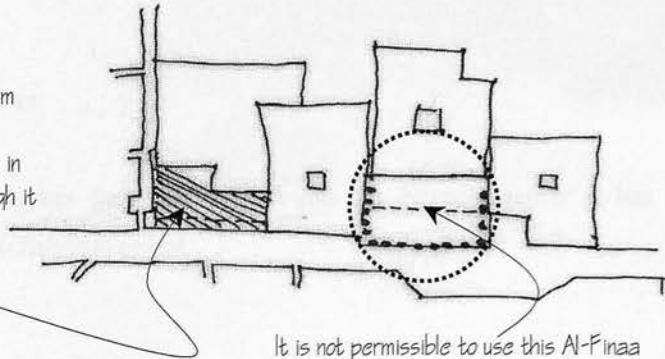
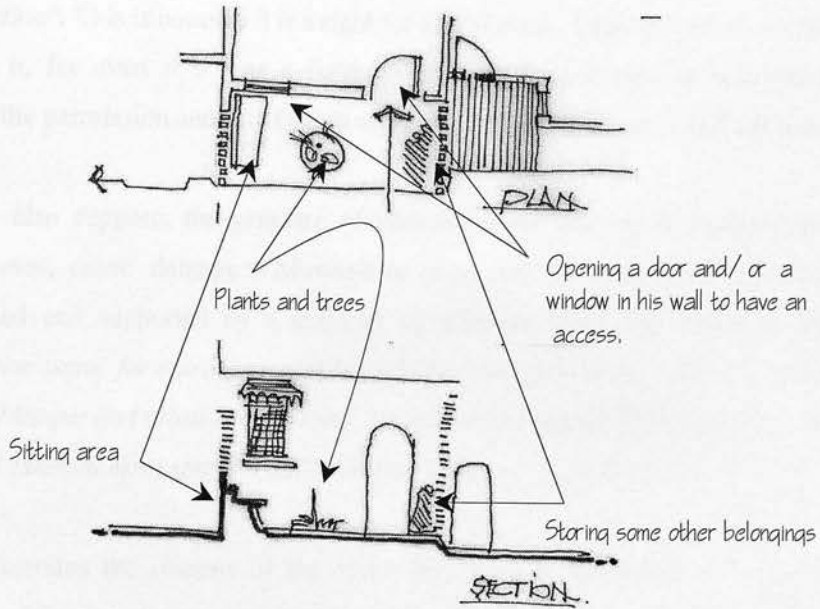


Figure 10.16 Using the Another's Finaa (Source: the Author).

10.2.6 Freedom of Dwellers to Utilise Their Finaa

The dweller is free to open a door or a window in his wall to his *Finaa* to make an access, to put fixtures onto his *Finaa* wall in order to store his belongings or to plant trees and so on, so long as this does not harm the passers-by (see figure 10.17).



The dweller is free to utilise his Finaa by any means, so long as he does not produce any harm to the passers-by, for instance he can build a sitting area, plant trees, put his belongings or open a door to have an access to the street etc.

Figure 10.17 The Freedom of Dweller to Utilise His Finaa (Source: the Author).

10.2.7 Hiring Al-Finaa

The owner of Al-Finaa has the right to rent out his Finaa whether it has been clearly demarcated by stones (Al-Tahjeer) or not.

10.2.8 Prevention of the Continuous Use of Another's Finaa

The owner shall be entitled to prevent the others of the continuous use of his Finaa as they put their belongings and personal properties in it.

10.2.9 Construction in Al-Finaa

There is a view which deals with the necessity for demolishing construction when it precludes or prohibits pedestrian rights. This is supported by Abu Hanifa on the basis of the Prophet's

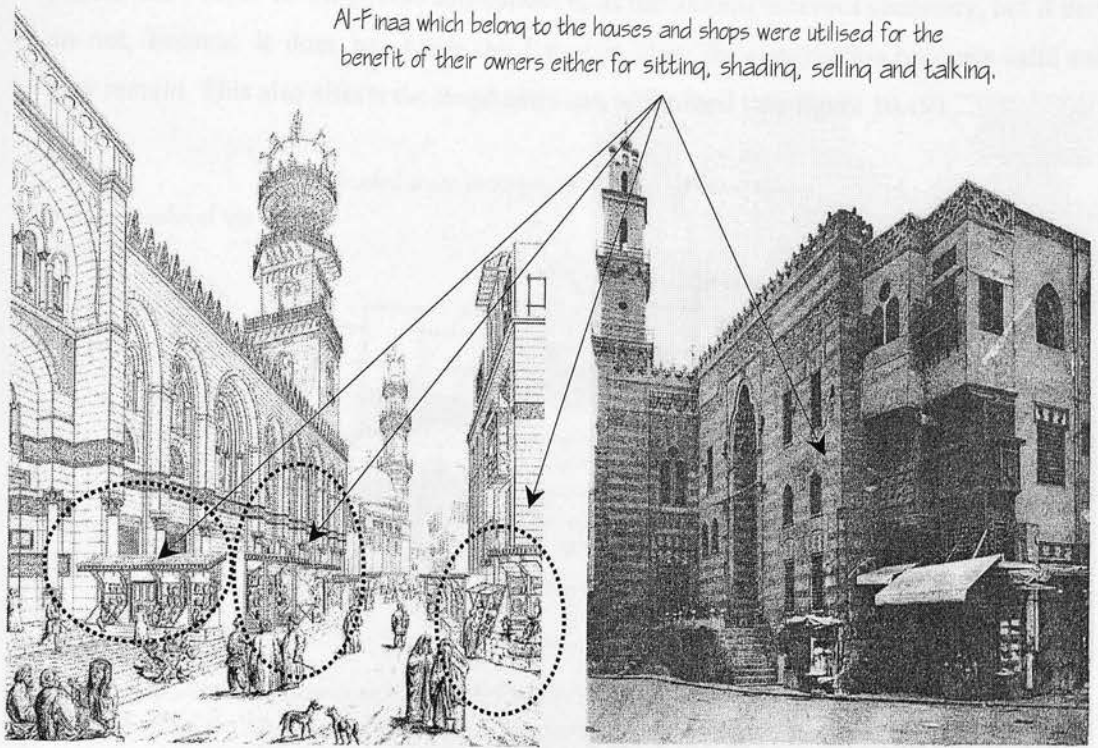
saying: “If someone takes one shiper [25 cm] of land without any right he will be in hell on the day of resurrection”. This is because it is a right for all Muslims. Thus, no one is entitled to take anything from it, for even if it was a right of only one man, no one can take this from him except through the permission and satisfaction of its owner (Ibn Al Rami, 1982, pp.333-334).

Another writer also supports the granting of permission as long as it does not prevent the pedestrian's access, cause damage to Muslims, or cause damage to, or narrow, the road itself. This is sustained and supported by a majority of scholars. Thus Ibn Taymiya says: “*The conception is the same for entrances, which might be divided from the road side, connected to the house and Mosque and related to the road. People on the road do not need much other than a small piece of external open space*” (Ibn Taymiya, 1986, vol.30, p.409).

Al-Lukhami illustrates the reasons of the Jurist difference in construction in *Al-Finaa*; Al-Lukhami states: “*Construction is permitted based upon Abu Hurayra ؓ Hadith indicated in Al-Bukhari 'If people have different claims on the road, its minimum limit must be seven cubits [350 cm]' but, as the road often becomes more than seven cubits, any person is entitled to construct in their Al-Finaa until it narrows and decreases to seven cubits*” (Ibn Al Rami, 1982, p.334). Others support the idea of demolishing the construction. This based upon the aforementioned Hadith.

10.3 Conclusion

- *Al-Finaa* was traditionally found in the road itself not inside the house and its ownership was for all people whom have the right of possession allowing them to rent it to others.
- It is not permissible to cause damage to any Muslim's road by the misuse of the *Al-Finaa* especially if it is narrow.
- The most important uses of the *Al-Finaa* are those of sitting, shading, selling and talking. This greatly affected the evolution and formation of the road (see figure 10.18).
- Acceptance of the community for the right to sit in *Al-Finaa* in the roads led to the construction of seats, shades and the planting of trees.



(Source: Serageldin I., 1977, p248).

(Source: Abdul Baqi I., 1991, p.130).

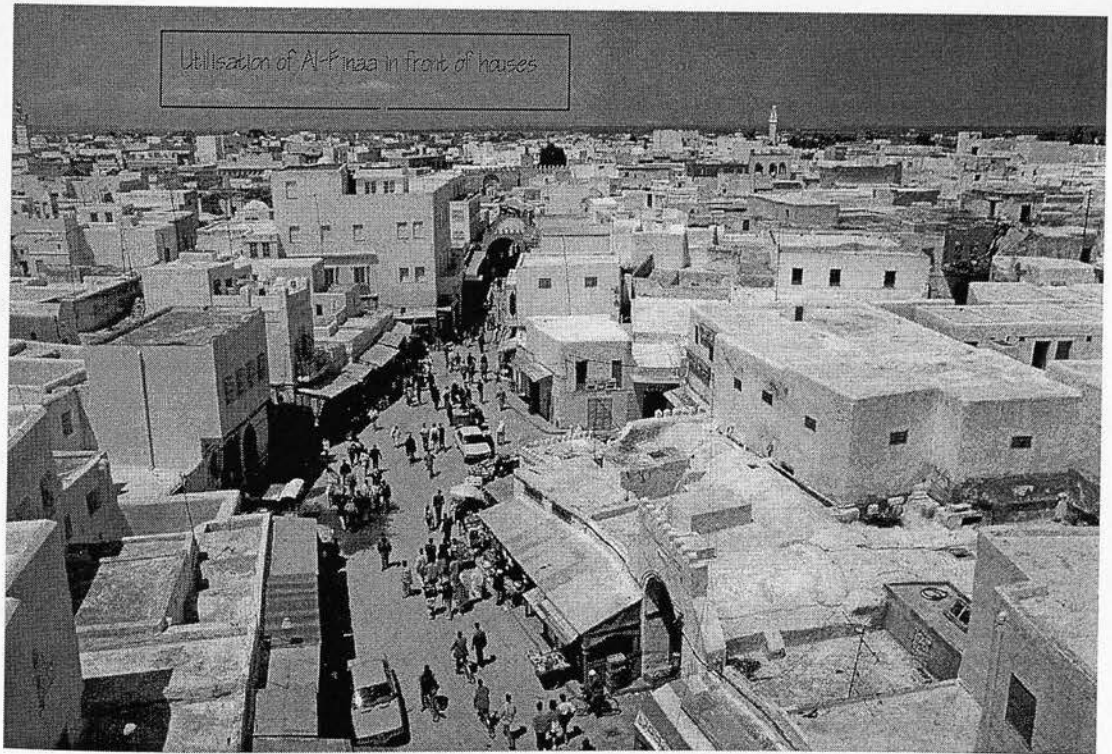
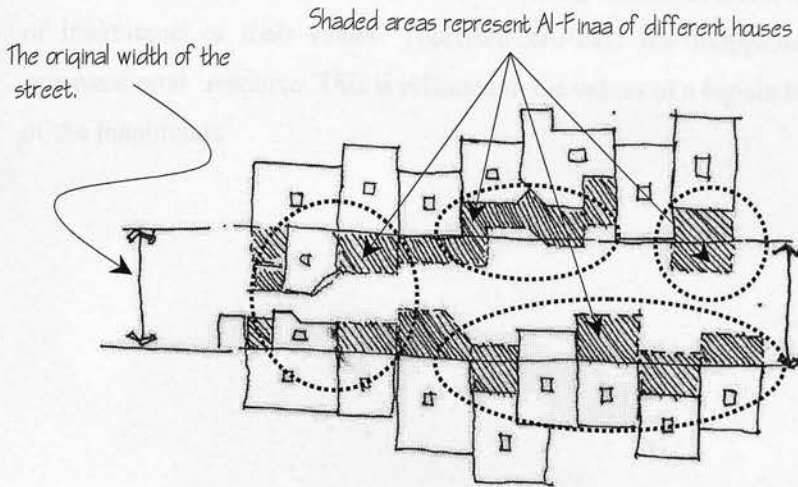


Figure 10.18

Different Types of Usage for *Al-Finaa* (Source: Brahim Chabboub, 1979, p.68).

- Some people built extensions to their houses in their *Finaa*. However, this might obstruct pedestrians ways. If the pedestrians oppose it, its demolition becomes necessary, but if they do not, because it does not cause any *Darar* or *Dirar*, the construction becomes valid and may remain. This also affects the shape and form of the road (see figure 10.19).



The owners of houses begin to utilise their Al-Finaa by building a shed in front of their main entrance gate wall, if the passers-by did not protest the sheds will continue for some time, then -by time- they built walls around these sheds and collect these Al Finaa to their houses, and this will surely change the boundaries of the street from its two sides.

Figure 10.19 Construction of *Al-Finaa* and Changes in the Road Shape (Source: the Author).

- If *Al-Finaa* is demarcated and determined by certain marks known conventionally as marks for *Al-Finaa* the owner may legally prevent others from using it.
- The inhabitants enjoy *Al-Finaa* as they enjoy the right of possession by use and exploitation. This is supported by a majority of jurists with the exception of Abu Hanifa.
- The *Al-Finaa* is formulated and demarcated by the inhabitants themselves.
- Differences of values among inhabitants are reflected in the formation along the sides of the streets since dwellers formulate the environment according to their capabilities and true values solving their problems. Thus, the environment herein is a true reflection of the desires and values of its inhabitants.

- It is the right of every Muslim to prevent *Darar*, which would happen by the transgression of any inhabitant should he misuse his right to utilise his *Finaa* by narrowing the pedestrian road or blocking the flow along it by any means.
- Today's built environment takes a contradictory stance, in that it does not reflect the needs of inhabitants or their values. Therefore *Al-Finaa* has disappeared as an architectural and organisational resource. This is reflected in the values of a legislative executive, not in those of the inhabitants.

CHAPTER ELEVEN

Al-Aswaqh

11.1 Introduction

This chapter has established how numerous of the most important aspects of the Islamic world were shaped by the Islamic world. It has also shown how the Islamic world was shaped by the Islamic world. It has also shown how the Islamic world was shaped by the Islamic world.

It is a very important chapter in the history of the Islamic world. It is a very important chapter in the history of the Islamic world. It is a very important chapter in the history of the Islamic world.

11.2 History of the Islamic world in the Christian era

The Islamic world in the Christian era is a very important chapter in the history of the Islamic world. It is a very important chapter in the history of the Islamic world. It is a very important chapter in the history of the Islamic world.

11.3 Origins and Establishment of the Islamic world

The Islamic world in the Christian era is a very important chapter in the history of the Islamic world. It is a very important chapter in the history of the Islamic world. It is a very important chapter in the history of the Islamic world.

CHAPTER ELEVEN

*Al-Aswaqh***11.0 Introduction**

This thesis has established how ownership can 'leak out' from private property into the semi-private realm of *Al-Finaa* (the forecourt). This requires that an equilibrium be found between the needs of the owner of adjoining property and the Muslim passer-by, whose presence on the street prohibits *Darar* (harmful deeds).

Al-Aswaqh (singular *Al-Souqh*) the markets of Islamic Cities, occur in the fully public realm and here the relationship between dwellers and passers-by is the key to understand how the concept of the market has formed.

11.1 Meaning of *Al-Aswaqh* and its Main Characteristics

The traditional Islamic market is what was known as *Maqaed Al-Aswaqh* (the seats of Market), which was a group of shops, *Bazaars* and *Bastas* (places for people who came first from the sellers at the market). Usually this person establishes a place for himself (having the right of *Al-Intifa'a* from sunrise until sunset for one day only). Every *Basta* (place of selling) would have its own shed if the seller wishes to and he is obliged to leave the place after the day ends. This type of *Souqh* (market) is found in the streets and often around the big Mosque, as well as along the extended roads in the front yards of houses. Sometimes these roads include shops or bazaars accessed from both sides. Some buildings, shops, or *Khans* (built and covered shops) may be covered by different types of shading devices [domes, vaults, wood, or fabric] and may even have dome gates or be designated for a specific commodity or profession only.

11.1.1 Origin and Establishment of *Al-Aswaqh*

How *Al-Aswaqh* was established in the traditional Islamic City differs totally from our current concept regarding the ways that businesses become established. The location was decided by the inhabitant's accumulated decisions. Thus, some markets were made by converting houses into

shops or altering some rooms into shops (a common practice in the traditional environment) thus changing the original function of a building from a place to live to a place for business. Throughout these alterations, markets have become established automatically in a seeming random fashion at number of locations. Therefore, one may find that one type of market originated in houses, the shop at the front facing the street while the house in the back or on the ground level floor got stilted at a gate or in the entrance of the street. These markets have continued to develop until they became connected and turned into the main markets in the city. Because of the great distances between trading areas and the need for vast open areas for major markets, the other types of trading centres were established outside the city limits (see figure 11.1 to 11.7).

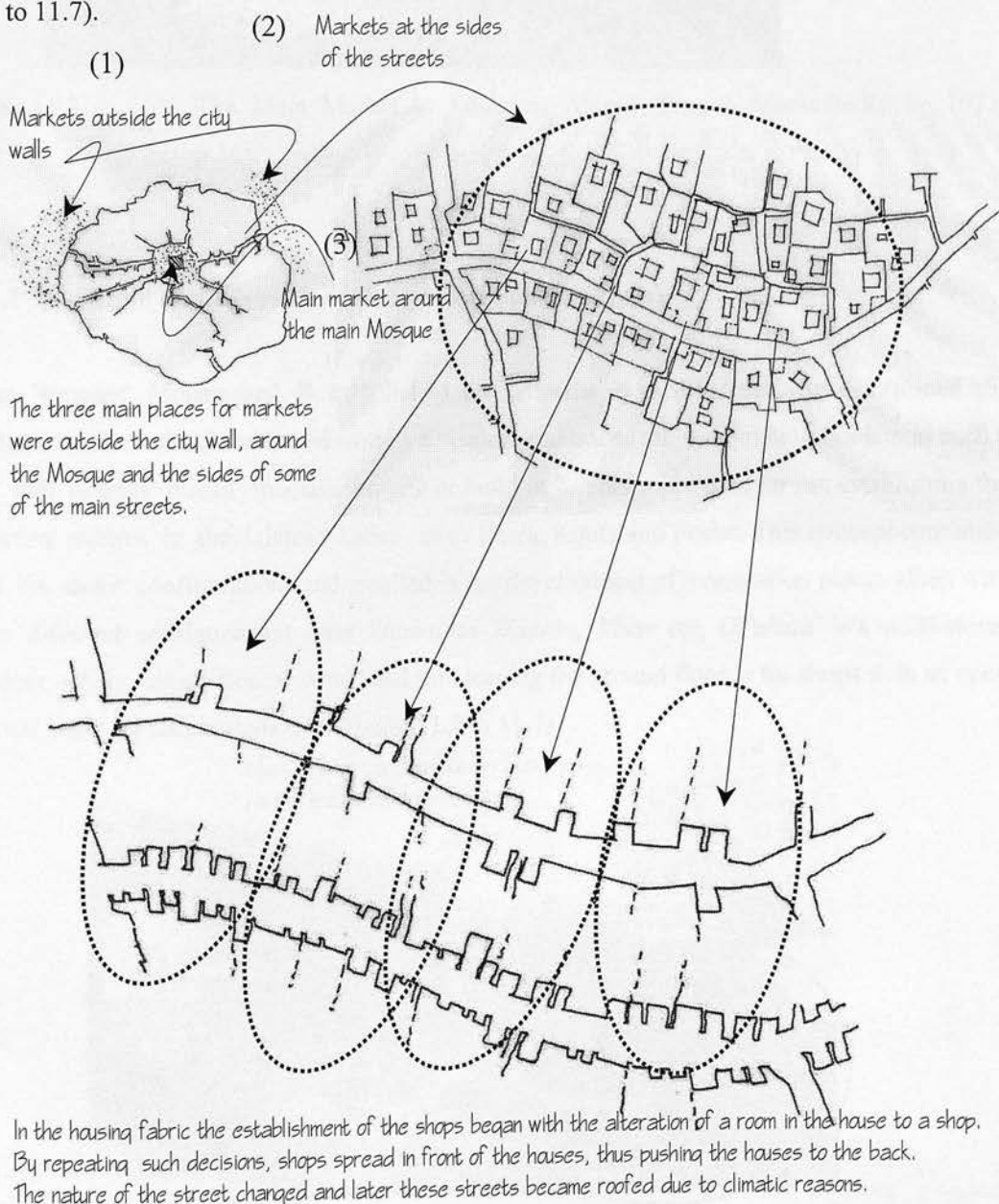
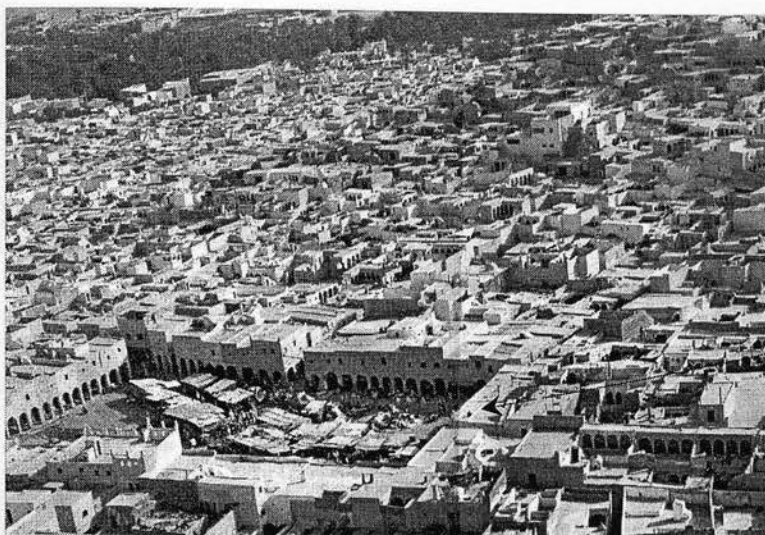


Figure 11.1

Establishment of Market Places (Source: the Author).

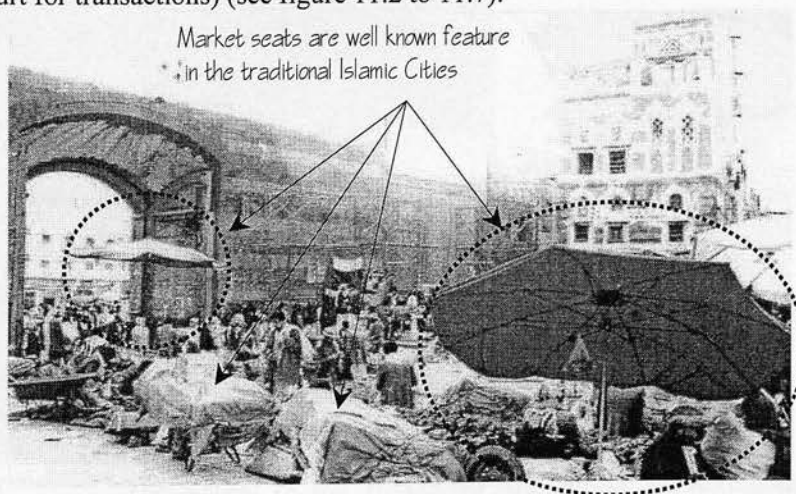


Establishment
of the market
places within
the urban fabric of
the Islamic City

Figure 11.2 The Main Market in Ghardaia, Algeria (Source: Manuelle Roche, 1973, p.36).

11.1.2 Origin of *Al-Aswaqh Al-Kabeerah* (Public Markets)

When Prophet Mohammed ﷺ established the Mosque in Al-Madinah, he determined the location of the market and the Mosque's forecourt and traced the surrounding borders in such a way that nobody would trespass through or build in it. This was exemplary in establishing the shopping centres in the Islamic Cities as of Basra, Koufa and Fustat. This concept continued with the same configurations and resulted in the development of new market places albeit with some different configurations later known as *Wakala*, *Khan* etc. (*Wakala* is a multi-storey building where upper floors were used for sleeping the ground floor is for shops with an open internal court for transactions) (see figure 11.2 to 11.7).



Market seats are well known feature
in the traditional Islamic Cities

Figure 11.3 An Open Air Market in the Old City of Sana'a, Yamen (Source: Architecture beyond Architecture, p.43)

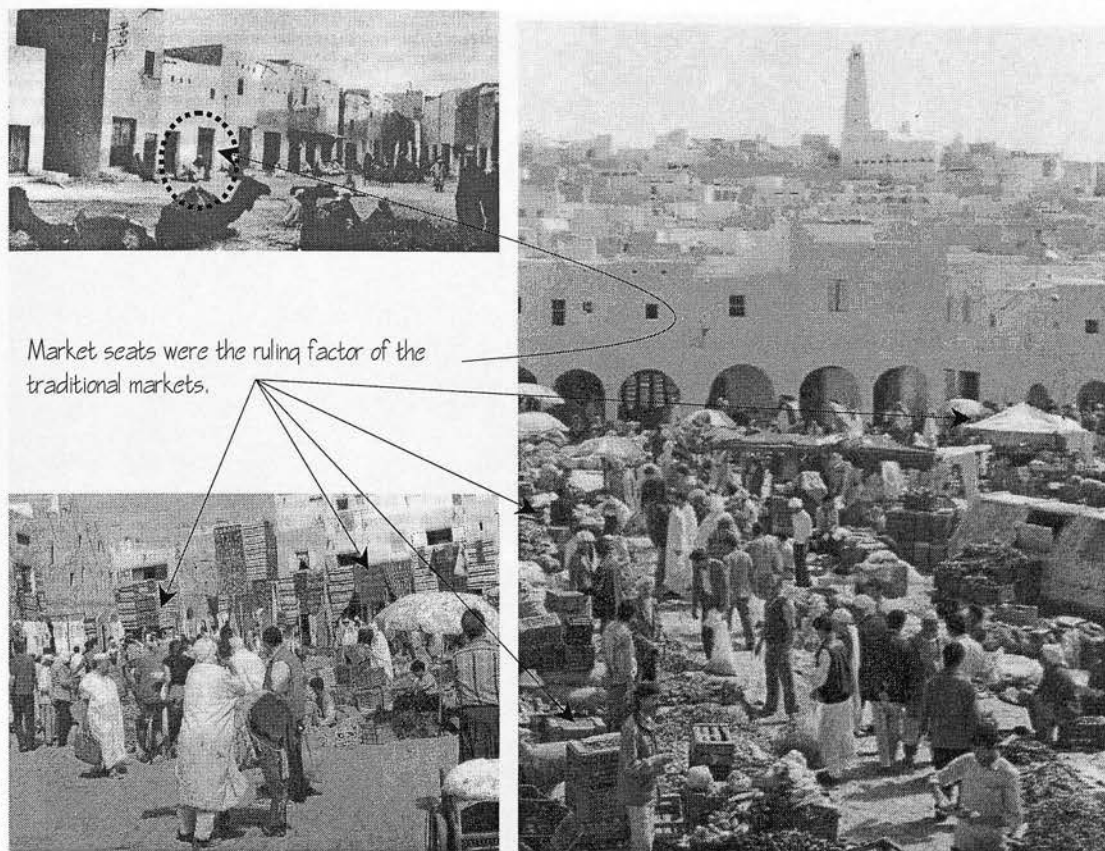


Figure 11.4 Market Seats “*Souqh*” in Ben Isguen and Ghardaia, Algeria (Source: Brahim Ben Yousef, 1974, pp. 69, 109).

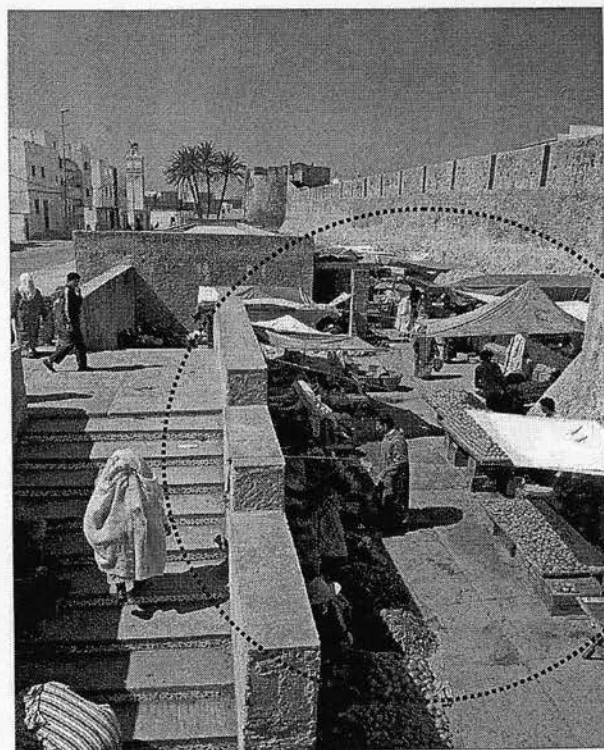


Figure 11.5 The Repeat of the Traditional Markets in the Rehabilitation of Asilah, Morocco (Source: Architecture for Islamic Societies Today, p.55)

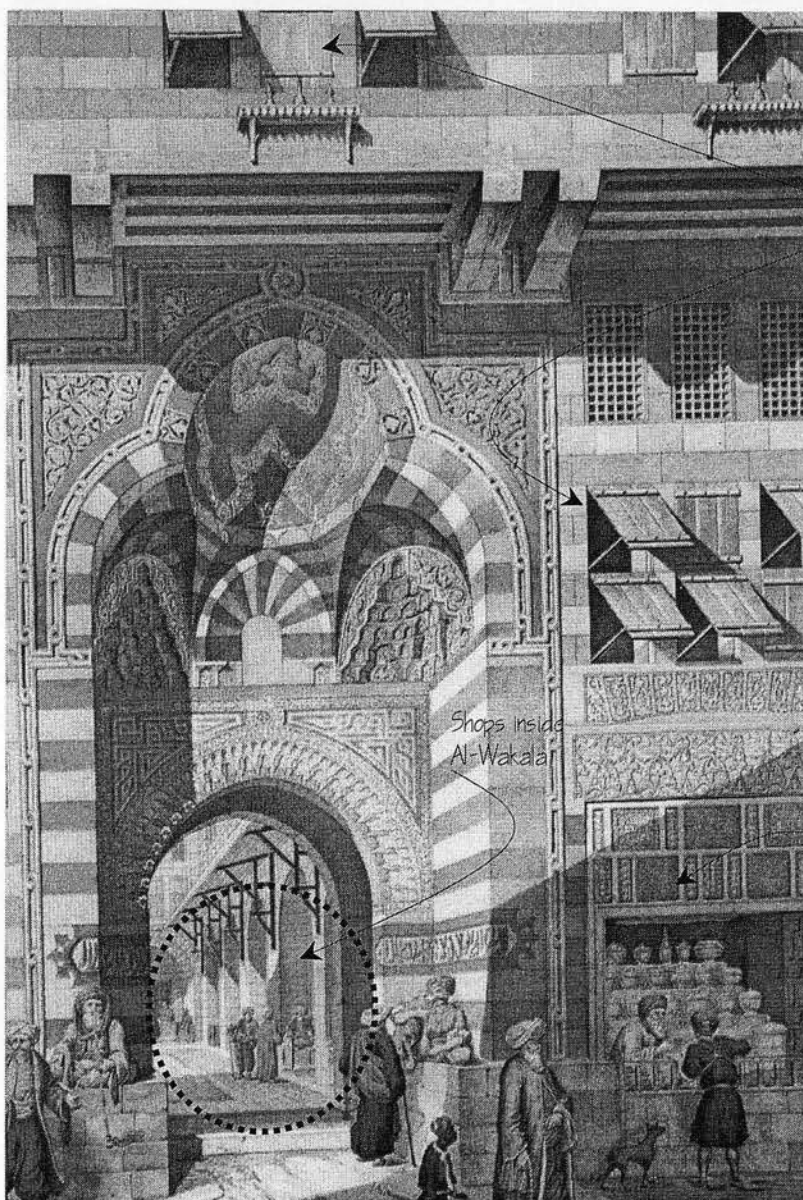
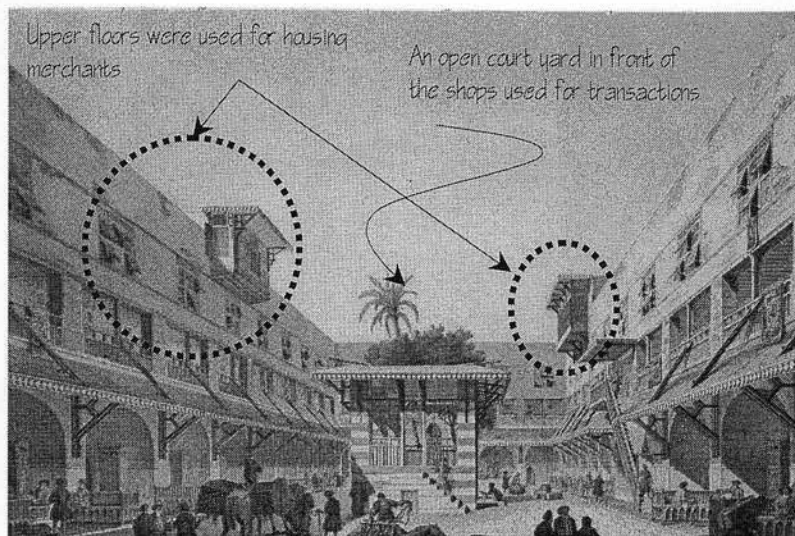


Figure 11.6 Interior of the Market Place(*Al-Wakala*), Cairo (Source: Aba Al Khayel, 1996, p.34).

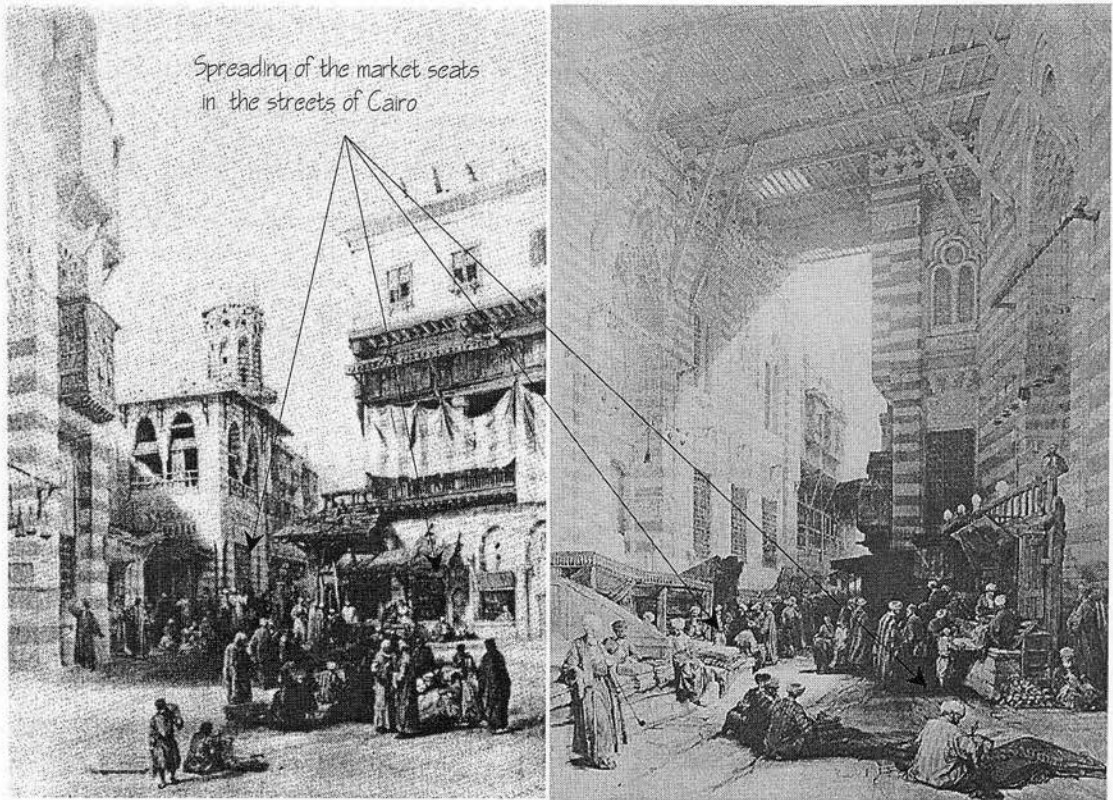


Figure 11.7 Market Seats in Cairo (Source: Janet Abu Lughed, 1971, pp. 45, 84).

11.1.3 Rules for Opening a Shop onto the Road in the Traditional Environment

Opening a shop or a door onto a public road comes under the Hadith of *Darar* as it can cause numerous problems. Opening a shop is usually considered to have more problems than opening a door or a window, or utilising part of a house for a furnace or private oven, because those who may sit in the shop may continually gaze inside the neighbours' house across the way to the extent that its occupants cannot enter that house without being seen by those sitting in the shop. Even with the clarity of this example, there is still some difference of opinion between scholars.

Ibn Al Rami (1982) says, quoting Ibn Wahb, “*If there was a situation where there was a wide road, such that whoever opened a shop would have the same degree of gazing [into the houses across the road] as would passers-by, then the owner of the shop is free to open that shop*’. In addition, when *Al-Qarawi* was asked about a man who owned a house that had a grocery shop on its left side and opposite another house and he wanted to open three additional groceries in his house insisting that this was one of his rights, as his opposite neighbours faced him across a wide public street which was the biggest street in the city. The owner of the opposite house prevented him saying that the doors of houses opened onto open streets. Thus, the groceries

were of an additional harm due to the constant presence of people in the stores. This made it clear that the three groceries unveiled the houses in front of them' ” (Ibn Al Rami, 1982, pp.322-324). Those who judged this event [from Malikiya Doctrine] prohibited the new shops because the house that had the grocery in it already enjoyed *Hiyazat Al-Darar* (possession of harm by priority of *Ihya'a*) (see figure 11.8).

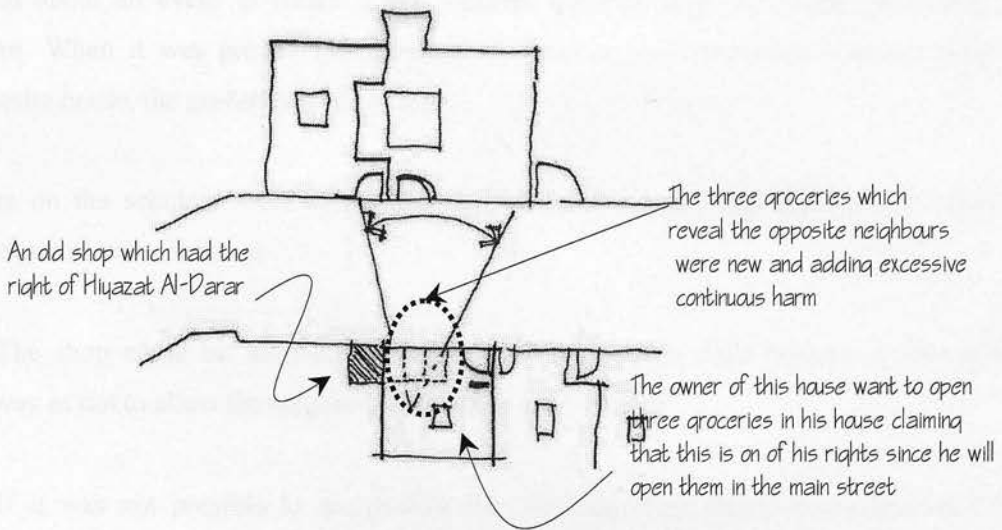
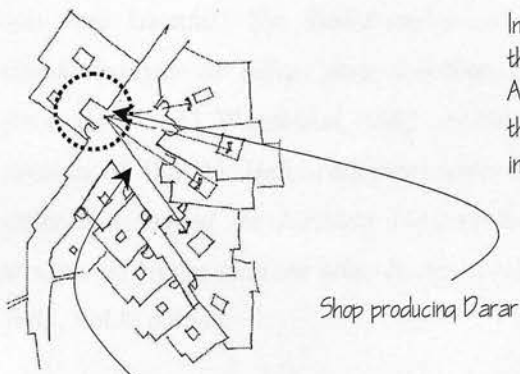


Figure 11.8 Rules of Opening a Shop on the Road (Source: the Author).

Ibn Al-Rami (1982, p.325) also mentioned that a man opened a grocery whose door lay in the direction of *Qiblah* in a street whose direction is from East to West. In front of the grocery and across the street was the entrance to a cul-de-sac and in the cul-de-sac was a house that opened towards the *Qiblah*. The owner raised his claim to the Judge Ibn-Al-Rafie. On investigation, it was found that those who sit in the grocery do not see those inside the house, although they might see people passing between the doors as they leave it.



These distances is fare enough to prevent qazing or seeing inside the other's houses in the cul-de-sac.

Figure 11.9 Difference of Judgement in Accordance to the Case Location (Source: the Author).

It was decided that the grocery could remain. This shows how the opinion differed on the basis of houses and the case location. These were used to measure *Darar*, to determine if the *Darar* should continue or not (see figure 11.9).

In another case, Al-Wanshirisi, (1981, vol.9, p.12, 14, 56) said that Qurdoba's scholars were asked about an event in which a man opened a grocery opposite the entry to another man's house. When it was proved that customers in the store could gaze at the entrance lobby of the opposite house, the grocery was prevented.

Later on the scholars were asked about this event and they differed. The majority views could be summarised as follows:

- The shop could be allowed by changing its position or its main opening position in such a way as not to allow the neighbour's entrance to be viewed.
- If it was not possible to re-orientate the shop, its owner should not be deprived from its benefit because the entrance was not a dwelling place that could be harmed by the shop. This was not considered to be *Darar* in the eyes of the scholars. It also seemed that the road was sufficiently wide.
- The other opinion scholars had was not to open the shop if moving of there locations was impossible.

In another event: Ibn Rushd was asked: “*‘There stand two doors opposite a small open road. The owner of one opened a door and two shops in his house such that was impossible for anyone to go inside or outside the other house unless seen by the visitors to the shop and thus it was very harmful’*. Ibn Rushd answered: *‘If this was proved, the owner of the two groceries should transfer or adjust their location, but if it was not possible, he would not be obliged to close them’* (Al Wanshirisi, 1981, vol.9, p.19, see also Ibn Al Rami, 1982, pp.323-324). The opinion of Ibn Al Hajj in another similar event, was: “*The owner of grocery should have been ordered to adjust the location far from the entrance of his neighbour because the harm of the grocery is bigger than the other harms caused by opening a door or a window*” (Al Wanshirisi, 1981, vol.8, p.454).

11.1.4 Results

- The dwellers, not the authorities, are responsible for decisions relating to shops. All events confirmed that it was the inhabitants only who had the right to develop their environment without any interference of the authorities. The only power that came from outside was that of the judges whose judgements related to *Darar* and derived from *Shari'a*.
- The change of houses into shops was done under the initiative of inhabitants or dwellers.
- Passers-by, the community and pedestrians did not interfere in the private affairs. Interference was only made in cases of *Darar*.

11.2 *Maqaed Al-Aswaqh* (Seats of the Markets)

Maqaed Al-Aswaqh has a very clear meaning in *Shari'a* and has been an important topic which jurists constantly emphasise and clarify. It is important to review the legal concept of these seats and their importance through a literature review to cover the opinions of different scholars.

11.2.1 Introduction and Definition

Under the doctrine of Al-Shafei (1904, vol.4, p.43): "*Whoever sat down in a place [of the market] to sell, is worthy [of the place] as long as it is convenient for him. But once he leaves it, he has no right to prevent others from taking it. The seats in the markets are not like vitalisation of dead land*". Al-Abbadi (1974, vol.1, p.164) said about the market seats: "*The market seat is the right of Al-Ikhtisas, which means the right of use*".

Ibn Rajab Al-Hanbali (1933, pp.192, 193) said that *Al-Ikhtisas* is "*Whatever concerns the person who is worthy of it and no one may take it from him*". *Al Ikhtisas* is not something to be owned or compensated, for the rights to use the facilities of the large markets in which sales and purchasing is done, are similar to any vending operation. So the priority of any place is conferred upon the first to arrive there.

In his book 'Al-Majmoh', Al Nawawi (vol.15, p.224) said: "*Utilisation allowed amongst Al-Amer is available in those wide areas, where one may sit thereby for the purposes of selling and purchasing goods. Whoever comes there first, it is his. Due to the Hadith of Prophet ﷺ 'It is for*

him who proceeded to a seat and he has the right to continue unless there is Darar to the passers-by' ”.

And in Qawaed Al-Ahkam, Al-Izz Ibn Abd El Salam (vol.2, p.73) said “Comes in Al-Ikhtisas many sorts; some of which are:

- Al-Ikhtisas by vitalisation of dead lands, by stone-marking [Al-Tahjeer] and granting;
- Al-Ikhtisas by proceeding to whatever allowable;
- Al-Ikhtisas by claiming vacant market seats;
- Al-Ikhtisas by finding places in Mosques to pray in isolation or privacy;
- Al-Ikhtisas by prioritisation to schools through endowments,
- Al-Ikhtisas by places of rituals as circumambulation and walking between Safa and Marwa, Arafa and Muzdalifa [all of these are places of Hajj];
- Al-Ikhtisas by inns, Khans and caravanserais on the road (see figure 11.10).

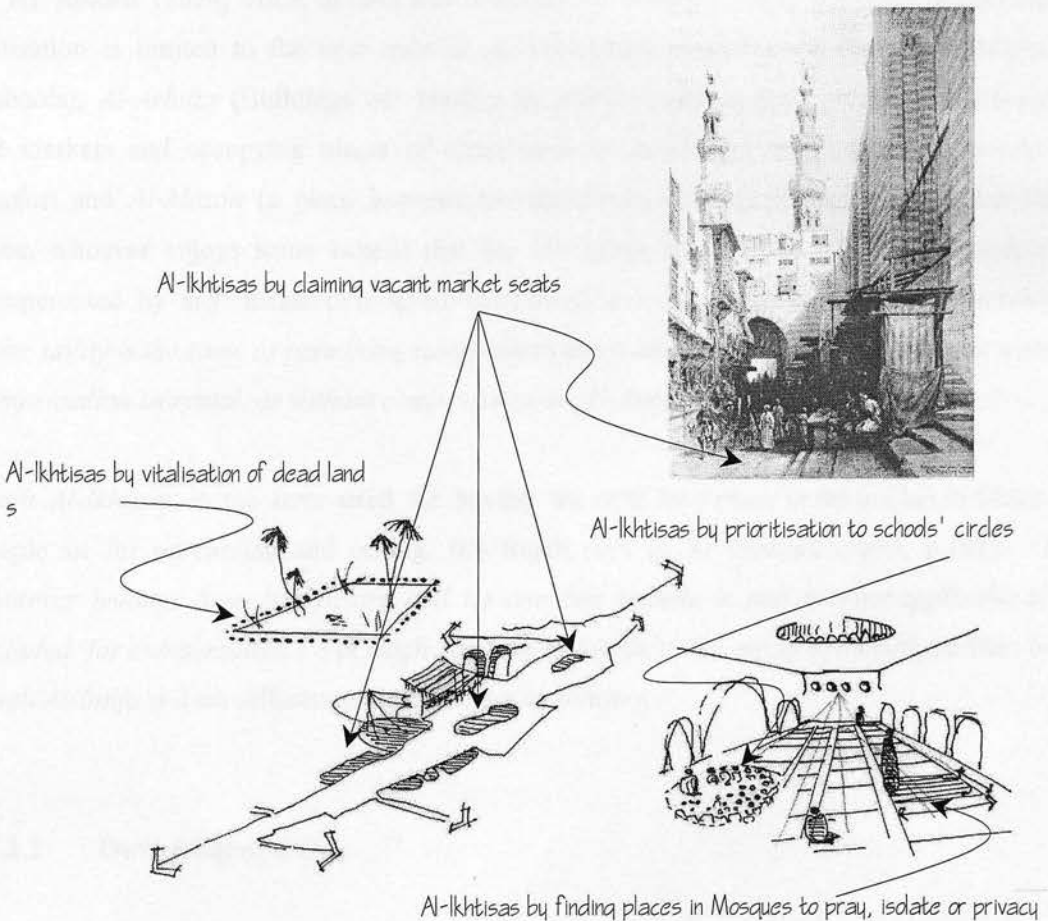


Figure 11.10 *Al-Ikhtisas* as Incomplete Ownership and its Different Types (Source: the Author).

Al Souti (1959, p.326) said: “*Who owns the right of Al-Ikhtisas has no right of rental for surety*”, that is, he does not need to pay to secure the right.

Ibn Qudama (1970, 5, 576) said: “*Whatever is part of the streets, roads and open places among the inhabited area, is not for anybody’s vitalisation whether it was wide or narrow because this is common among the Muslims. It is only allowable to sit down in the vast areas for sale and purchasing when doing so would not narrow the ways or disturb anybody*” (for more details see Al-Qawaed for Ibn Rajab, pp.201-204).

Al Mawirdi (1966, p.188) said: “*As for the right of Hareem of a Mosque, people are prevented from using it and is not allowable for the authorities to permit them, because it is a right for praying people. But if it is not harmful, it is allowable to use the Hareem by the right of Al-Irtifaqh*”. The statement of Abu-Yala Al-Hanbali (p.226) gives the same meaning.

In Al Abbadi (1974, vol.1, p.164) and Tahzeeb Al Forouk (vol.1, p.193) the ownership of utilisation is limited to the user only in such extreme examples as the dwelling in *Madrasas* (schools), *Al-Arbitta* (Buildings on borders for defence and guarding), sitting in the Mosques, the markets and occupying places of ritual such as *Al-Mataaf*, (the circular area around the *Kaaba*) and *Al-Masaa* (a place between two mountains in which pilgrims walk) and so forth. Thus, whoever enjoys some benefit that the law gives him, is not permitted to rent, or be compensated by any means or to let anybody dwell in it. Al-Abbadi added: “*The ownership of some utility is the same as permitting somebody to use it alone or enable others to use it without compensation as rental, or without compensation as Al-Ariyah*” (1974, vol.1, p.187).

Haqh Al-Ikhtisas is the term used for having the right for a place in the market in which the people sit for purchasing and selling. Ibn Rajab says in Al Qawaed (1933, p.192): “*It is whatever belongs to a beneficiary and no one can impede it and it is not applicable to be included for compensation*”. Yet *Haqh Tamleek Al-Manfa’a* (the utility ownership) differs from *Haqh Al-Intifa’a* from different points of views as follows.

11.2.2 Ownership of Utility

The ownership of utility allows its owner to behave freely and provides the right for a person to use it himself or to enable other persons to use it without a compensation such as rental, sale or some other arrangement. Its establishment is done through a contractual basis such as rental, borrowing, endowment or will.

11.2.3 Ownership of Utilisation

The ownership of utilisation applies to its owner and no one else. The owner has no right to transfer it by, for example, selling, rental or borrowing. It arises through free utilisation but is subject to common use without ownership as with the roads, rivers, places in a Mosque etc. As well as for what is accepted as ownership like *Al-Ikhtisas* of *Ihya'a* of the dead land by the act of *Al-Tahjeer*.

11.3 Regulations and Principles of *Maqaed Al-Aswaqh*

This part of the chapter covers different aspects covered by the principle of *Maqaed Al-Aswaqh* specifically the rights concerning arriving there first and the related aspects of giving the place up to some other party, the extent of such a right, duration of *Al-Ikhtisas*, the authority to allocate places or organise the market and the building and constructing of the markets.

11.3.1 *Al-Aspaqiya* (Precedence) to the Places of the Market

Ahmed said that the use of a place in a market belongs to the person who arrives there first from the morning until night. This was originally done in the market of Al Madinah in years past. The Prophet ﷺ said “*It is to him from me whoever precedes for it*”. Such has the right to shade himself by a *Barriya* (straw mats) or a canopy and so forth, as is necessary without doing any harm to others. In addition, the claimant has no right to build a *Dekka* (an immovable seat) or any similar permanent feature because it causes problems to passers-by during the night and blind people.

Al Balazri (1957, p.197) cites a talk about Abdul Rahman Ibn Ubaid in which his father said, “*We used to go to the market at the time of Mughira Ibn Shuba (D: 50/630), twice Governor of Koufa, who had a place. He was thus worthy of it until night. When Ziyad came, he said: ‘Whoever sat down in a place, he is worthy of it as long as he stays in there’.* Thus [Al Balazri added] ‘*The principle of Al-Aspaqiya lead to the emerging of many conventions and stopped the oppression*’ ”.

Malik said, ‘*If somebody becomes well-known by a place and became closely associated with it, he deserves it more than any other. This should have a bearing on disputes and quarrels*’ ” (Al Mawirdi, 1966, p.188).

The impact of *Al-Aspaqiya* principal in *Al-Aswaqh* is that precedence confirms the right. In a dispute, priority goes to the longest established user. The principle of precedence led to dialogue which led to agreements, which later formed conventions and increased the number of masters and owners in the urban environment.

11.3.2 Subletting or Giving up the Right of *Al-Ikhtisas* to Somebody Else

Ibn Rajab Al-Hanbali (1933, p.199) writes: *"The right of enjoying market seats and places in Mosques and the like, can be transferred without substitute because of precedence. Thus, even if the prior user preferred somebody else, while a third one occupied the place, would he be more rightful than the second party?"*

One could argue that he is, because the right of the first man has been terminated due to his separation from the place. Therefore the right of precedence returns. Alternatively, if he had left the place for some necessary reason, his right is still kept since he replaced himself with somebody else.

11.3.3 Retention of the Right of *Al-Ikhtisas* at the End of the Day

Ibn Rajab asks (1933:193): *"Does the right end by the end of the day or continue until removal of luggage from the place?"*. Two points of view can be considered, from the speech of Ahmed in the narration of Harb. The first: is whatever is the local custom of the people of the market; the Second is whether, if one prolongs his sitting, the place might become 'known' as his.

Abu Yala (p.226) states that: *"If a claimant left the place, he has equal rights to any other with respect to the next day. The rights of the first comer would be considered as per the understanding from Harb narration. Because if the right was more permanent, its status would be transferred from allowance to ownership"*. And this means that the right continues until the utiliser removes his luggage.

11.3.4 Right for the Authorities to Interfere in Regulations of Market-Seats

Al Mawirdi (1960, p.188) describes two points of view. One of them is that the duty of an authority should be confined to preventing market users from oppressing others and mediating

disputes and quarrels. An authority has no right to remove any man who is seated or who is reserving places for latecomers. The second view states that the authority has the right in the markets by allocating and granting places for someone.

11.3.5 Granting in the Street

Granting of places in the Muslim's street does not lead to ownership. This is not something that the Governor is allowed to do, because the street is different from dead land. Nonetheless, there is a difference between many scholars in this issue. Many have come to the conclusion that the interference of authorities is legitimate under due constraints based on given certain conditions.

Al Souti (1982, vol.1, p.130) in the article of *'Al-Bari Fi Iqta'a Al-Shareh'* said: *"The interference of the Governor is only for finalising the disputes among parties"*. In greater detail, Al Souti (1959, p.129) said: *"It is allowed for the authorities to grant [market seats] but never to own them, but he [the man who was granted] is more worthy of it. He is not allowed to build a concrete chair because this narrows the road and harms the blind and others at night. If the Governor granted a place to a man he has the top priority of it whether he has transferred his luggage to it or not, because the Imam has expressed his view and thoughts"*.

Al-Khawarizmi (1980, p.213) said: *"Granting is of two kinds: granting for utilisation and granting for ownership. The granting of utilisation means that the Imam or his deputy may grant a place for someone, as a seat in the market or a wide place, for selling and purchasing goods; this is allowable if no harm happens to the passers-by"*.

In Al Majmoh, Al Nawawi said (1983, vol.5pp.225-228): *"It is possible to grant places among inhabited area as seats of markets for utilisation. Whoever is granted such a right, becomes the rightful man of the place whether he brought his luggage or not, because the Imam has made this his view"*.

In addition to the above Al Hanafiya doctrine, Abu Youssof says (1979, p.93): *"It is not allowed for the Imam to grant any part of the Muslims' street to somebody who may build something on it"*.

Ibn Rajab says in Al-Qawaed (1933, p.350) *"If two persons reached the same place for a seat, they have to use a rota and this may require the guidance of the authorities just for preference"*.

11.4 Conclusion

The traditional environment is decentralised. This means that its affairs are left to the inhabitants and neighbours or their representatives as they see fit. For instance, if somebody wanted to construct a new shop in his house, he has to consult his neighbours, not the authorities, because his neighbours are the people who might be disturbed or harmed.

This generates an ongoing search for the best solutions for the environment. Even when such decentralisation leads to possible difficulties, the solutions that emerge from these will lead to agreements. In this regard the solutions will come from the utilisers of site since they have full knowledge of the problems. Therefore these form social conventions such as have happened in public open areas like the markets.

Furthermore, the following codes of rights in a market were established:

- One cannot build in a market.
- One cannot sell or rent the place.
- One must obey laws and regulations of the market.
- A seller can shade himself on the condition that this does not hamper others.
- Whatever is among the streets and open spaces in the inhabited areas is not to be vitalised by anyone whether it was wide or narrow, because these areas are common for all Muslims.
- It is allowable to sit in the open areas to sell goods provided that this does not narrow any area against anybody nor disturb the passers-by.
- The first comer to any place in the market has a right to it until night.
- The users of the market seats are prohibited to cultivate the courtyards of the market or Mosques, public houses or entrances of the city and its walls or fences. They are also prohibited from making umbrellas, partitions, or other constructions over a road if it is narrow.

CHAPTER TWELVE

Road Regulation in the Islamic City

12.0 Introduction

This chapter covers different aspects of the design and concept of *Tareeqh Al-Muslimeen* (the public street) and *Al Tareeqh Gha'er Al-Nafiz* (cul-de-sac), in an attempt to find answers to important questions such as: Who sets the features of *Tareeqh Al-Muslimeen* and demarcates its direction? Since a road will change over hundreds of years, how has the built-up area on both sides been controlled and set in the pattern that we can see in most Islamic Cities? Were there regulations that promoted this organic appearance with its curves and frequent changes of width? Did roads ever have to maintain a minimum width? This chapter attempts to answer some of these questions in detail to see if there was any hidden formula behind *Tareeqh Al-Muslimeen* and *Al-Tareeqh Gha'er Al-Nafiz*. That might explain the road plan of the Islamic City (see figure 12.1: 12.5).

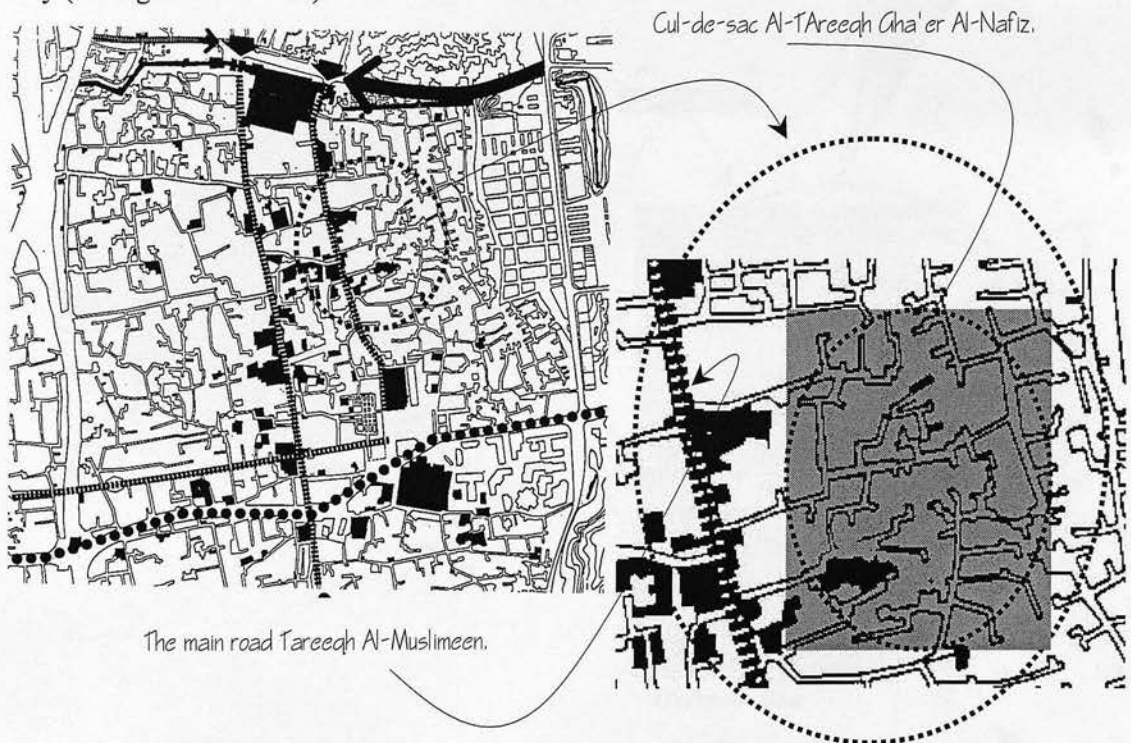


Figure 12.1

Cairo Old City is a Common Example of the Road System emerged in Different Places in the Islamic World with a Similar Configuration (Source: Cairo, Abdul Baqi I., 1991, p.35).

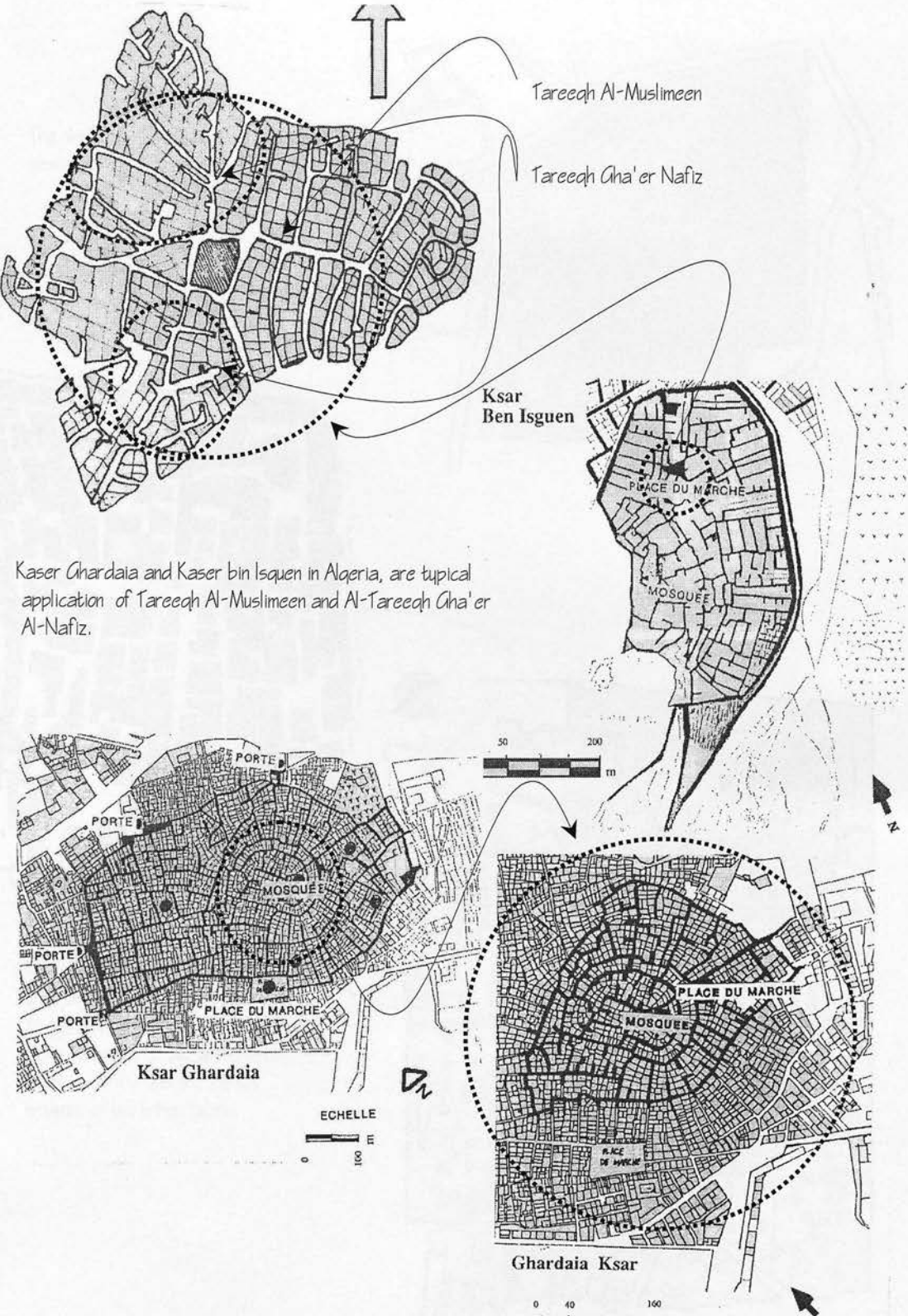
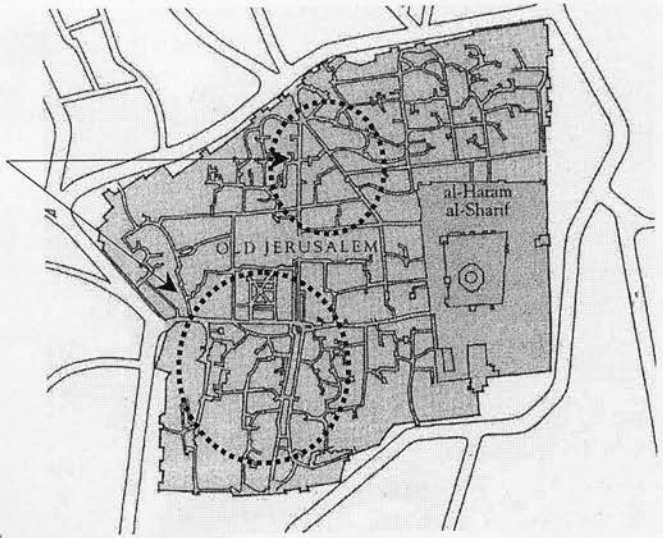


Figure 12.2

The Same Configuration of the Main Streets and Cul-de-sac was Applied in Ksar Ghardaia and Ben Isguen in Algeria (Source: Brahim Ben Yousef, 1974, pp. 59, 60, 61, 93).

The old part of Jerusalem city also has a similar street configuration



In Wadi Hadramawt and in the traditional city of Riyadh the Darb, Al-Tareeqh and Darb Gha'er Nafiz were very clearly zigzag streets forming at the end the street network of the urban fabric.

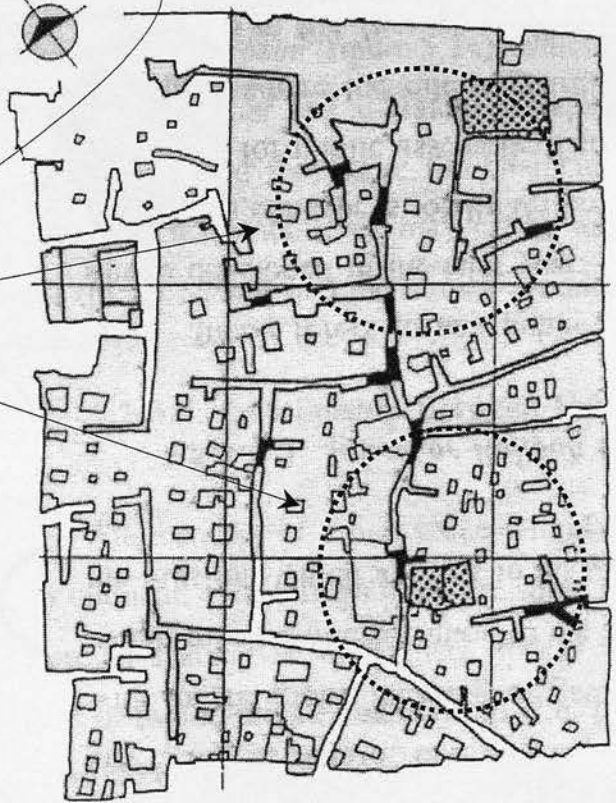


Figure 12.3

Some Other Examples from the Middle Area of the Islamic World
(Source: Fadan, Y., 1983, pp. 315, 315, Lewcock R., 1983, p.71).

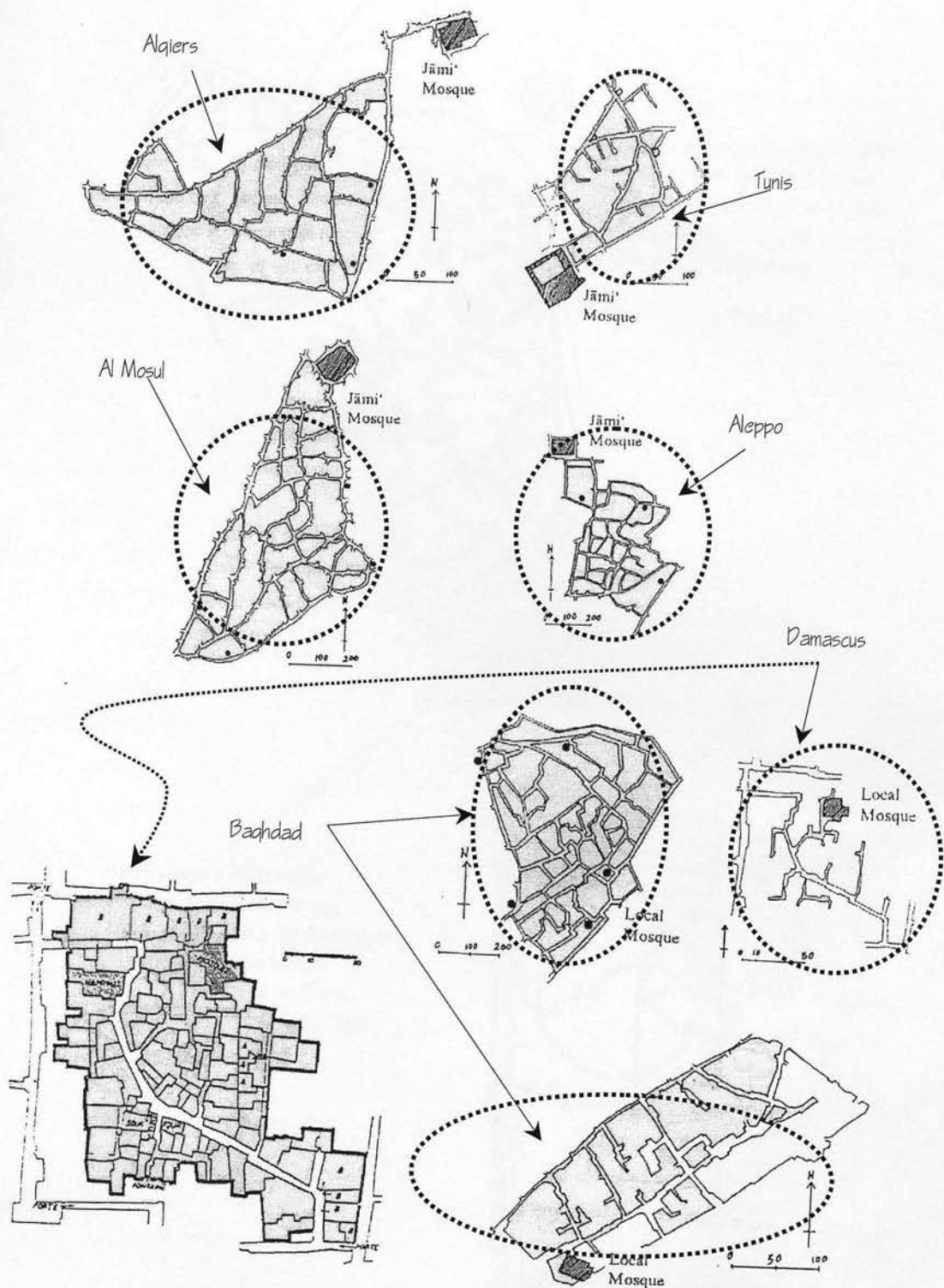
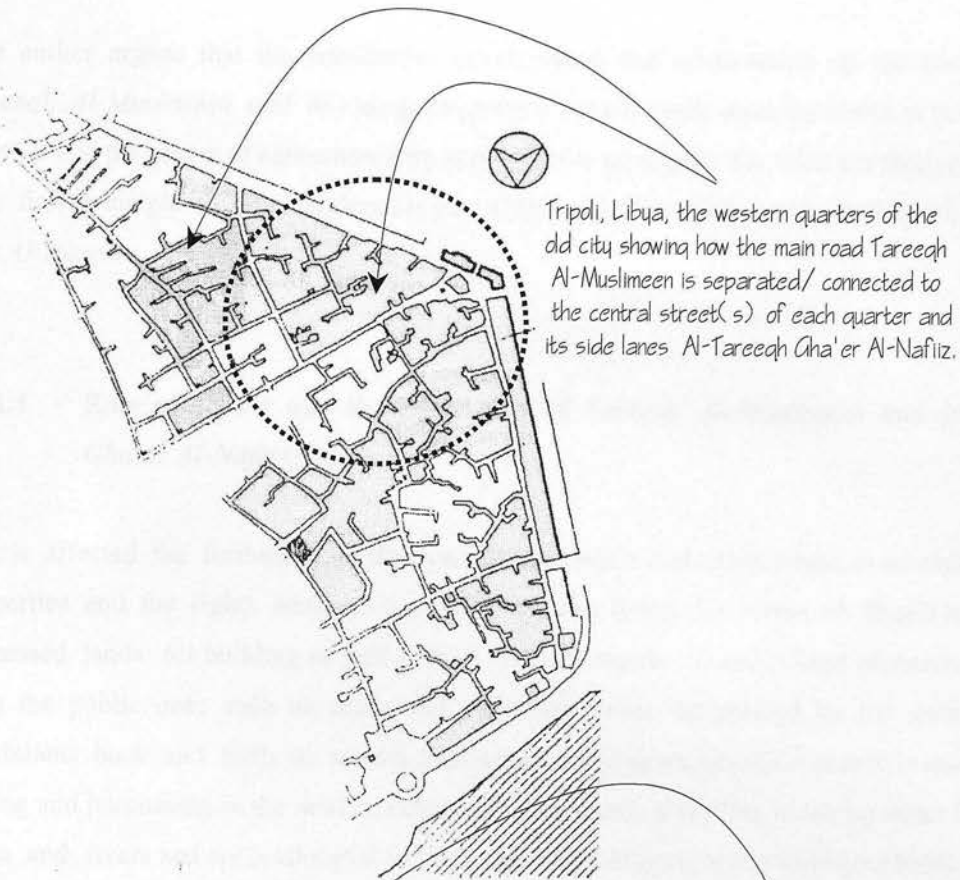


Figure 12.4

Tareeqh Al-Muslimeen and Al-Tareeqh Gha'er Al-Nafiz in Other Traditional Islamic Cities (Source, Sauvaget, 1943, p.452).



Heart village in Afghanistan establish a road network very similar to that in the far west cities in the Islamic World (like in previous shown cities i.e. Tripoli, Baghdad, Damascus, Cairo, Tunis, Mosul ...etc).

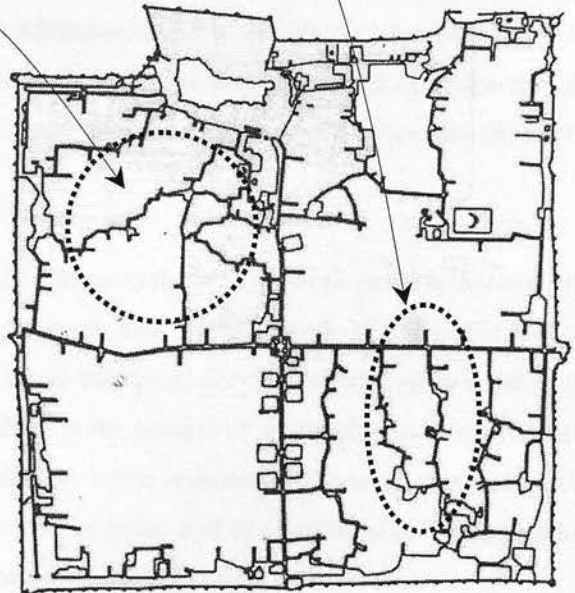


Figure 12.5

Same Configuration was Repeated in Tripoli City in Libya and Herat Village in Afghanistan (Source: Denis Grandet, 1988, p.34, Aga Khan, 1988, p. 67).

12.1 *Tareeqh Al-Muslimeen (Main Road)*

The author argues that the foundation, development and construction on the two sides of *Tareeqh Al-Muslimeen* and its changes over time were brought about by virtue of principles of *Shari'a* and the power of authorities who applied these principles. So, what are these principles? The first principle to be considered is that of *Ihya'a* and its related rules, *Al Irtifaqh*, *Al Finaa* and *Al-Hareem*

12.1.1 *Role of Ihya'a and the Formation of Tareeqh Al-Muslimeen and Al-Tareeqh Gha'er Al-Nafiz (Cul-de-sac)*

Ihya'a affected the formation of the road in the traditional environment in accordance with properties and the rights attached to them. In more detail, by virtue of *Ihya'a* individuals possessed lands for building as well as their own possessions. These private possessions, along with the public ones such as roads and forecourts, were determined by the paths used by inhabitants back and forth to answer their needs, for instance going for prayer in the Mosque, selling and purchasing in the market, cultivating their lands, travelling to taking water from their wells and rivers and areas allocated for their children's playing in the neighbourhood. All these factors had their own effect in determining the road as a location, then as a direction.

This movement was also governed by the adjustments and other rights related to each *Ihya'a* like the rights of *Al Irtifaqh* (easement) which brought forth subsequent rights of *Al Moroor*, *Al-Majraa* and *Al-Maseel*. Rights of *Al-Hareem* as previously explained and are also dealt with later in this chapter in more detail.

The accumulation of these adjustments gave shape to the road network in the traditional city concerning its location and direction. The network was an outgrowth of many piece-meal decisions unique to each place and social group that could only be understood by inhabitants themselves. These factors are wholly embedded in the context of geography, location, climatic elements, social relationships among neighbours, water resources and construction materials. They accumulated as each individual respected the rights and *Al-Hareem* of all who preceded him, including the respect for their paths and water ravines (see figure 12.6).

The owner of property one was the first to make the Ihya'a to the waste land in that area and he had his own way to the water source and he has his Finaa and Hareem and other rights of Al-Irtifaq (rights of Al Maseel, Al Moroor, Al Majraa, Al Ta'ali etc.).

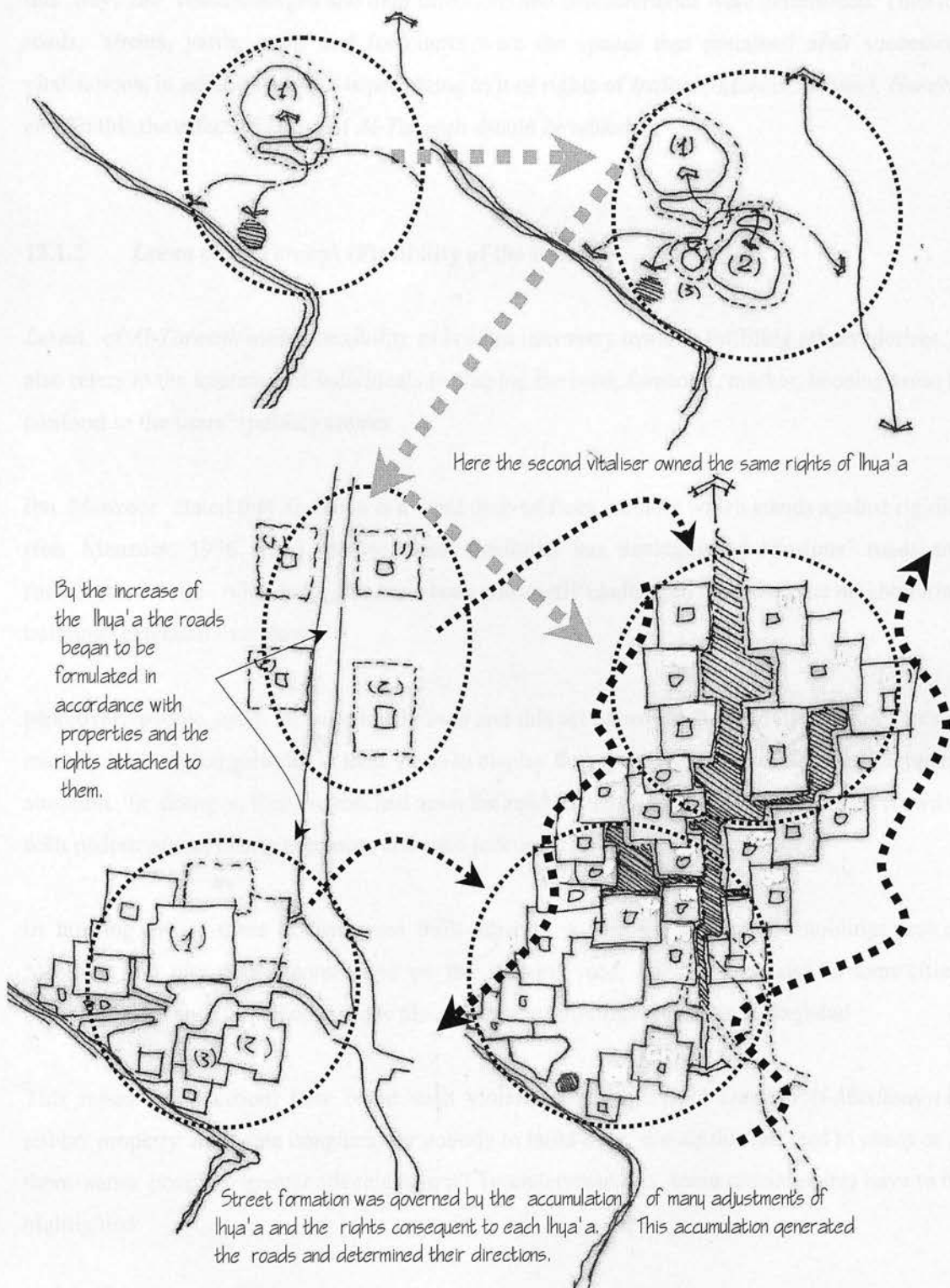


Figure 12.6

Role of Ihya'a in the Formation of the Streets in the Traditional Environment (Source: the Author).

In addition, any decision taken by the land vitaliser was considered a restriction for the one succeeding him in vitalising nearby wastelands and so on. As *Ihya'a* decisions accumulated in this way, the roads emerged and their directions and characteristics were determined. Thus the roads, streets, yards, paths and forecourts were the spaces that remained after successive vitalisations, in addition to what is pertaining to it of rights of *Irtifaq*, *Moroor*, *Maseel*, *Hareem* etc. To this the effect of *Leena* of *Al-Tareeqh* should be added.

12.1.2 *Leena* of *Al-Tareeqh* (Flexibility of the Road)

Leena of *Al-Tareeqh* means flexibility as is often necessary towards fulfilling others' desires. It also refers to the tolerance of individuals in shaping the road, forecourt, market, housing areas to conform to the users' (public) desires.

Ibn Manzoor stated that *Al-Leena* is a word derived from softness which stands against rigidity (Ibn Manzoor, 1956, vol.3, p.424). Such flexibility has distinguished Muslims' roads and forecourts, whose rules and rights have been constantly challenged whenever the neighbouring buildings extended over them.

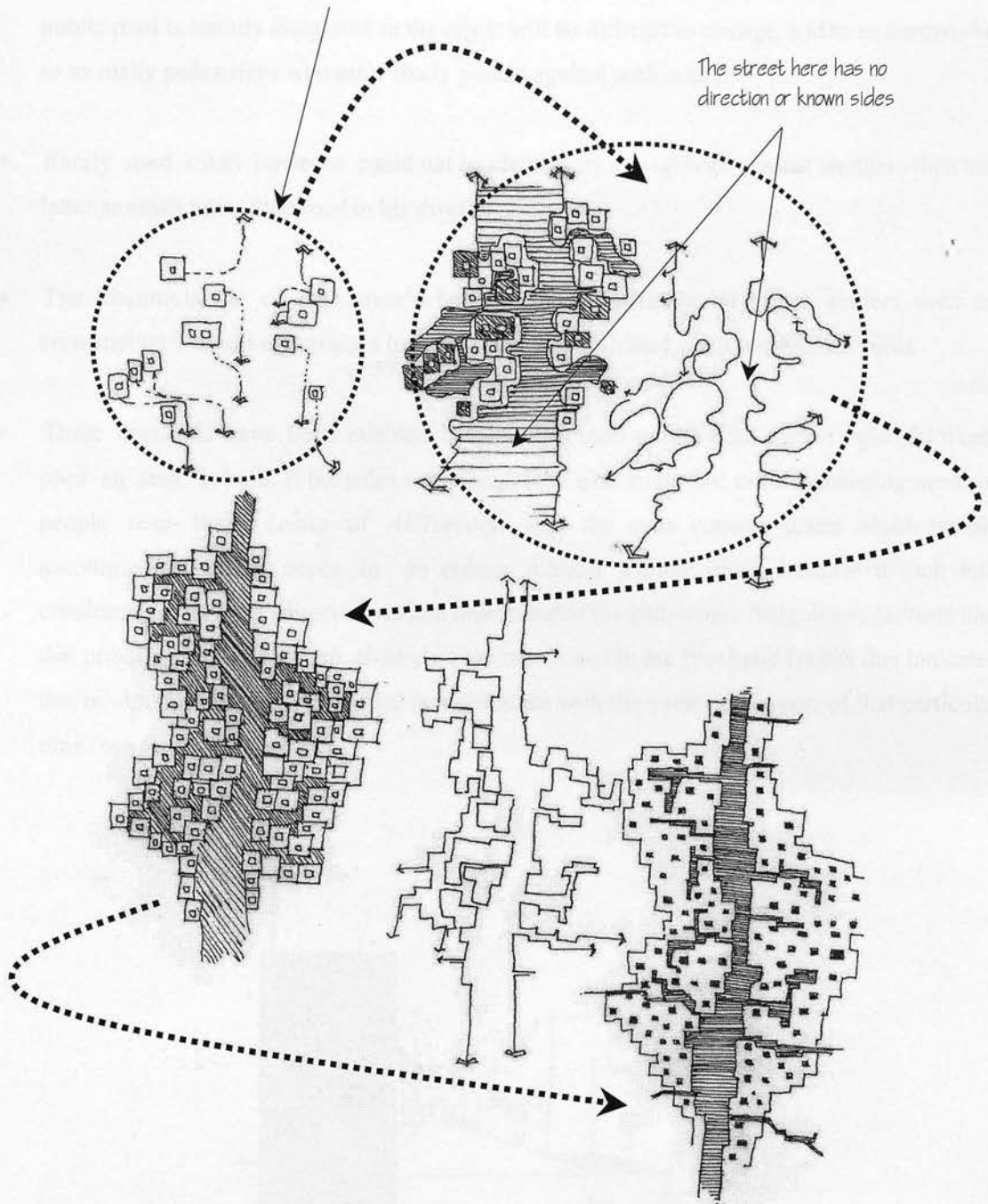
Moreover, people used to build in *Al Finaa* and this act narrowed the road itself. Merchants in markets built roofed galleries in their yards to display their goods as a way of drawing shoppers' attention. In doing so they encroached upon the road. Sellers also dominated locations crowded with pedestrians as in city entrances and road junctions.

In housing areas, some houses were built adjacent to the walls of public buildings such as Mosques and city walls (sometimes on the Mosque roof, but this was rare). In some cities, buildings even encroached onto roads planned by the authorities, such as in Baghdad

This raises the question: how could such violations be tolerated? *Tareeqh Al-Muslimeen* is public property and, one imagines, for nobody to build over. Would this not lead to chaos or is there some possible greater advantage in it? To understand this, some crucial points have to be highlighted:

- The concept of private ownership (i.e. houses and shops) and public possession (roads) and the rights related to each owner governed road formation through time.

In the very beginning of the construction there were no directional streets with predefined sides or pre-planned site locations, only a group of properties owned by *lhya'a*.



By the increase of building construction the road shape began to emerge and - over time - led to narrowing or blocking the roads. The roads have always been changing gradually and in a flexible manner to a road of well-known shape until it reaches its minimum width, which cannot be less if it is to accommodate its traffic loads.

Figure 12.7 *Leena of Al-Tareeqh and the Formation of the Network Road system in the Traditional Islamic Cities.* (Source: the Author).

- Construction decisions often affect the road shape sometimes leading to narrowing or blocking of roads. Consequently these decisions rely on road position before construction and provision of these decisions differs herein from one road to another. However, if, a public road is heavily integrated in the city it will be difficult to change, add to or narrow due to its many pedestrians who most likely protest against such action.
- Rarely used roads however could not be claimed by a neighbour against another when the latter annexes part of the road to his dwelling.
- The accumulation of population's building decisions, even on minor matters such as constructing a bench or sowing a tree, formulated and shaped roads and frontal yards.
- These decisions have been enabled because the road and its sides are not rigid and fixed once an area is built. If the sides were fixed, they well might not suit the changing needs of people over time. *Leena* of *Al-Tareeqh* was the main concept under which people accommodated their needs in an orderly manner without chaos because it took into consideration all the observations and objections of the pedestrian. Neighbours protests and the principle of *Al-Tareeqh Al-Maytaa* are mentioned in the Prophetic Hadith that indicates the minimum width of any road in accordance with the values and usage of that particular time (see figure 12.7, 12.8).

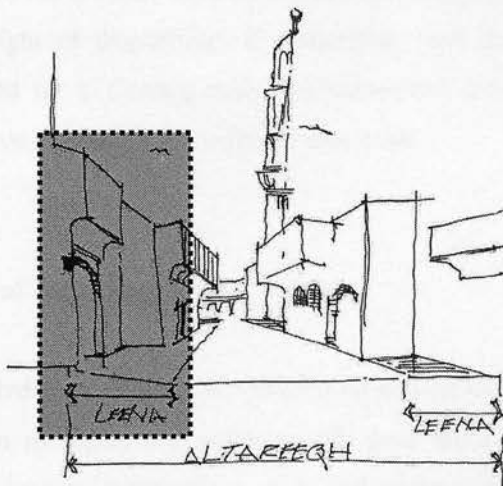


Figure 12.8 *Leena* Concept in the Traditional Environment (Source: the Author).

12.1.3 Ownership of the Road

Jurists agreed that roads, yards and riversides belong to all Muslims, not just the public treasury. That means that the state should not have any jurisdiction over these things.

In stating his definition of a road owned by Muslims, Ibn Abdeen (1979, vol.6, p.592) said: *“Valid roads existing in countries and villages are different from those in the desert since these cannot be often adjusted and the road for public use is one the users of which cannot be counted”*.

It could be said that many jurists have been mistaken when they considered that what is possessed by Muslims such as roads, yards and river sides are automatically the state's property, for to allow the governor to control and/or dispose of these places goes against what is stated by *Shari'a*.

Al Souti indicated (1983, p.135) that *“What magnified the problem was that some common people thought that river soil is the property of the public treasury, although this is an unproved matter. It is clearly similar to surface minerals that the Imam has no right to allocate and provide ownership of, but it is greater than apparent minerals in this respect”*.

This distinction between what is the property of the public treasury and what belongs to all Muslims is important for the environment in that ownership by the public treasury provides the authority with the right of disposition. If something were the property of Muslims, the state would not be entitled to it. Consequently, definitions that distinguish between what is private and what is public have a great effect on the environment.

12.1.4 Diversity of Road Shapes

It is taken for granted that roads differ according to their capacity. That is, if they link many places, their function multiplies and more people pass more frequently through. Thus, these roads become wider, approximating those of the town centre and main markets. For minor ones with fewer links, their importance decreases as capacity and pedestrians are reduced. A road also differs in being near or far from town: central ones are needed by many pedestrians, so they are larger; and far ones are trodden by fewer pedestrians, so they are narrower.

12.2 Diversity of Road Regulations and *Haqh Al-Tassaruf* (Right of Disposition)

Roads that belong to a fixed number of people, as those of cul-de-sacs, do not follow the same regulations as roads open to unlimited number of people. An increase of pedestrians on a road multiplies the road's status, so each pedestrian has the right to object to any action carried out by inhabitants such as building a bench or a shed, whether it is a harmful act producing *Darar* or not. But in rarely trodden roads, the principle of *Darar* always has to be taken into account.

Ahmed Ibn Hanbal commented on a person who builds in a Muslims' *Maytaa* road: "*He who constructs in a Muslims' road is worse than he who puts a barrier between him and his partner by which he took a part of his land, because the latter takes out from one, but the former takes out from the whole Muslim community*" (Abu Yala, 1969, p.213, Ibn Taymiya, 1983, vol.30, pp.399-400). The road is collectively owned by all Muslims in perpetuity and this ownership increases whenever pedestrian use increases.

12.2.1 *Haqh Al-Tassaruf* on *Al-Tareeqh*

Haqh Al-Tassaruf is one of the important rights which has had an impact in determining the shape of road. The roads in the traditional city were given names (i.e. *Tareeqh Al-Muslimeen* and *Al-Shareh Al-Azam* for the main public roads and for the cul-de-sac: *Hara*, *Zoqaq*, *Darb*, *Tareeqh Gha'er Nafiz* etc.) expressing their function according to the importance of each road separately. *Tareeqh Al Muslimeen* for instance must be 'trodden', not just dead end streets that are wider than others. Other less important roads were called 'less trodden' streets. These were narrower and commonly had dead ends. This was the traditional image of the streets and the different types of rights were applied to them in accordance to the capacity each type could accommodate. So to apply *Haqh Al-Tassaruf* properly to the roads one must be aware of some important aspects:

- The owner of the public road is the Muslim community. Muslims have the right of disposition, being the users. In some big cities, governors assumed the responsibility of representing Muslims, controlling and disposing the road because they did not trust the community to observe and preserve the road. This is still happening in all our cities today, thereby keeping road ownership (responsibility) out of the public realm.

- Other less-important roads which are more common, have been subjected to rules of *Shari'a* in their formation. This was also the guiding principle for the public and was applied in the urban environment. In these roads, each human being has the right to use the road as long as his disposition does not harm the pedestrians and allows enough room in the right-of-way to accommodate his change and all pedestrian movement.
- Thus if a certain act in the road causes *Darar* to pedestrians in the traditional streets, it should be prevented, by consensus of all doctrines. If there is no *Darar* and the act is not opposed by anyone, or nullified upon some pedestrian's request, it is deemed to be an approved act in continuity. *Darar* is acknowledged: "*Unless prevention is produced by an infant or by one placed under guardianship, so it would be unacceptable*" (Ibn Abdeen, 1966, vol.6, p.592).

12.2.2 The Literature Review

The literature review gives a clear indication of the right of *Haq Al-Tassaruf*. Through a review of Jurists' Opinions, one soon becomes aware of other dimensions supporting this idea and right and its applications and role in forming *Al-Tareeqh* in the Islamic City.

12.2.2.1 Al Hanafiya Doctrine

Al Kasani (1986, vol.6, p.265) says: "*If a man wants to put an extension or extend a water spout to the road, this act has two elements: 1) The roadway should remain clear on the basis of our Prophet's ﷺ saying, 'No Darar and No Dirar', otherwise, everyone should prevent him of doing so and 2) the roadway becomes as a cul-de-sac. If it is not harmful for pedestrians, he has the right to enjoy it unless someone protests against this, in which case he is not entitled to enjoy it later*".

Al Sanami (1983, P.211) indicated "*A man extended a toilet of his house into Tareeqh Al-Muslimeen. If there is a Darar, the man is prevented from doing this and if there is not, he is entitled to go on. If a Muslim litigated against him before construction, this should prevent it, if this was done after construction, the toilet should be demolished since Muslims have a right to do this*". He also stated, "*It is true as per Al-Hanafiya doctrine that every Muslim has the right of prevention and litigation*".

12.2.2.2 Al Malikiya Doctrine

Ibn Al Rami (1982, p.332) says: "A man extended his house onto the Muslims' road by a distance of one or two cubits. When he had built his wall, spent money and extended another house, his neighbour across the roadside litigated him to the Sultan [the Judge in this case] asking to demolish what he built. Eight cubits remained of the road and this is more than the seven cubits, which is the width stipulated by the Prophet's Hadith ﷺ. The builder said that the road width was a utility for him since it was his forecourt and had been a stall for his animals and the remainder was the road for Muslims. Ashhab [a jurist representing Al-Malikiya - D: 204/784] was asked: 'Has the neighbour the right to demolish what is newly built?' He answered: 'Yes, what is built should be demolished, whether there are eight or seven cubits in the road'. This judgement implied that an objection by the opposite neighbour led to demolishing what was taken out from the road as the road would become narrower and not sustain its present flow of pedestrians, which counts as a *Darar*.

To illustrate this statement, the author gives an example which reflects possible stages in the change of the street. Firstly, the inhabitants have the right to open a door onto the street; secondly, to add a few columns in their forecourt, and, thirdly, the right to roof over these columns in a sequence of permissible deeds. If no pedestrians objected to these acts, they can continue due to a lack of *Darar*. Eventually the extension and the house all become one construction. Therefore, the street shape has changed as it continuously does through residents adding and demolishing elements of construction on the street (see figure 12.9).

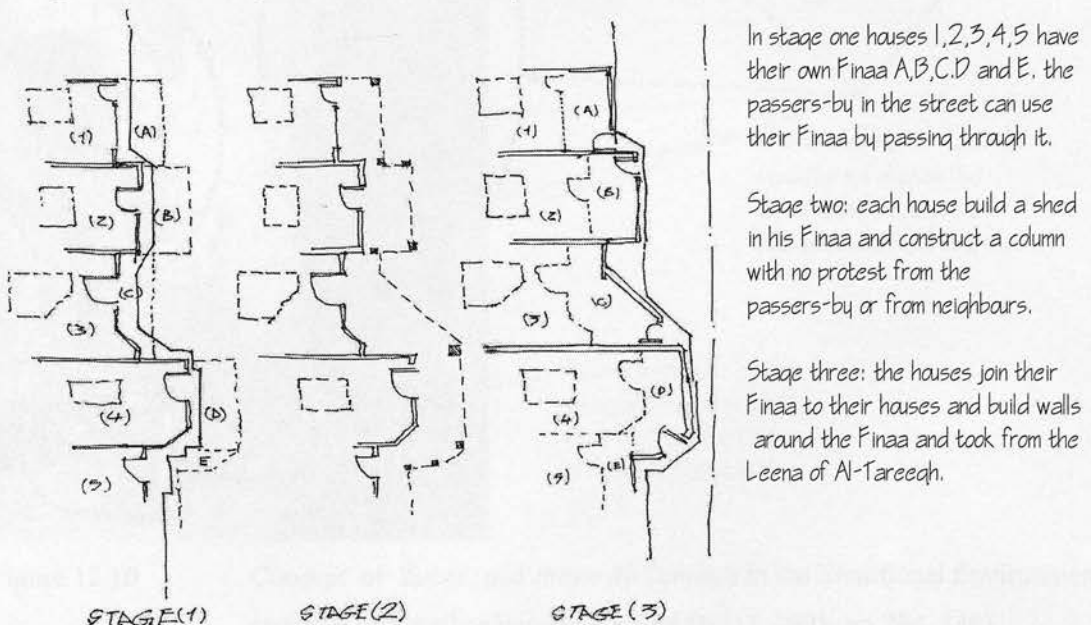


Figure 12.9

Stages of Change in Street Shape (Source: the Author).

12.2.2.3 Al Hanbaliya Doctrine

This doctrine prevents any construction in the road whether it produces *Darar* or not. In order to allow such a change, this opinion needs a strong religious motive, or a permanent monitor of the road by Muslims and authorities.

12.3 Actions on *Zaher Al-Tareeqh* and *Baten Al-Tareeqh*

Zaher Al-Tareeqh refers to the property walls which form its upper level sides (of a house) and *Baten Al-Tareeqh* is the road itself and the property walls which form its lower level sides. A person who wants to extend a wing, build a *Roshan* (plural *Rawashen*), construct a shed above the road or extend a waterspout, his action is called building on *Zaher Al-Tareeqh* (because it was in the upper level). As for the person who wants to plant trees, or build a shop, or sit for selling and buying on the road, or to annex part of the road to his house, this type of action is called action in *Baten Al-Tareeqh*. These two types of actions are governed by the principle of no *Darar* and no *Dirar* (see figure 12.10).

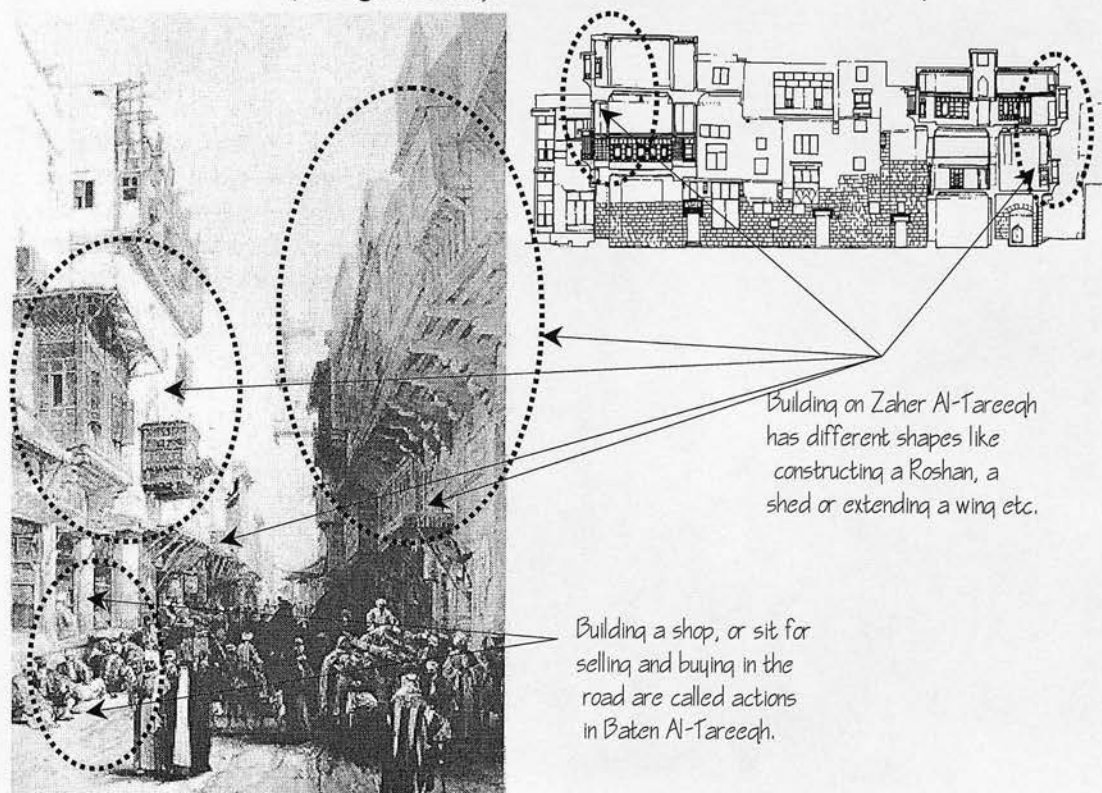


Figure 12.10 Concept of *Zaher* and *Baten Al-Tareeqh* in the Traditional Environment (Source: The Author Based on Abdul Baqi I, 1991, pp 284, 336).

If this does not cause harm to pedestrians, its enjoyment and action will be approved unless a pedestrian objects to this and asks for litigation or cessation. Thus, the road becomes narrow and its shape changes and since there are many other aspects of adding and subtracting from the road in its *Zaher* or *Baten* their will never be a typical format for roads in the sense of width, length and height. But it is clear that there will be a similarity since the effective reason is the same, along with (then) unanimously agreed upon principle that no part of a Muslim's road should be destroyed or removed.

12.4 Criteria for *Tareeqh Al-Muslimeen*

A road is considered large if it exceeds the seven cubits which is specified in the Prophet's *Hadith*. Roads beside rivers and those that are designated for beasts carrying loads are of twenty cubits. So people permitted the passage of great stretchers (burdens) in large alleys and roads. In the traditional environment, the great camel carrying cargo was the widest single thing that passed through the roads (see figure 12.11).

In the traditional urban environment, the great camel carrying carques were the tallest and widest single thing that passed through the roads. This, along with other determenits, formed the shape of the Muslim's roads.

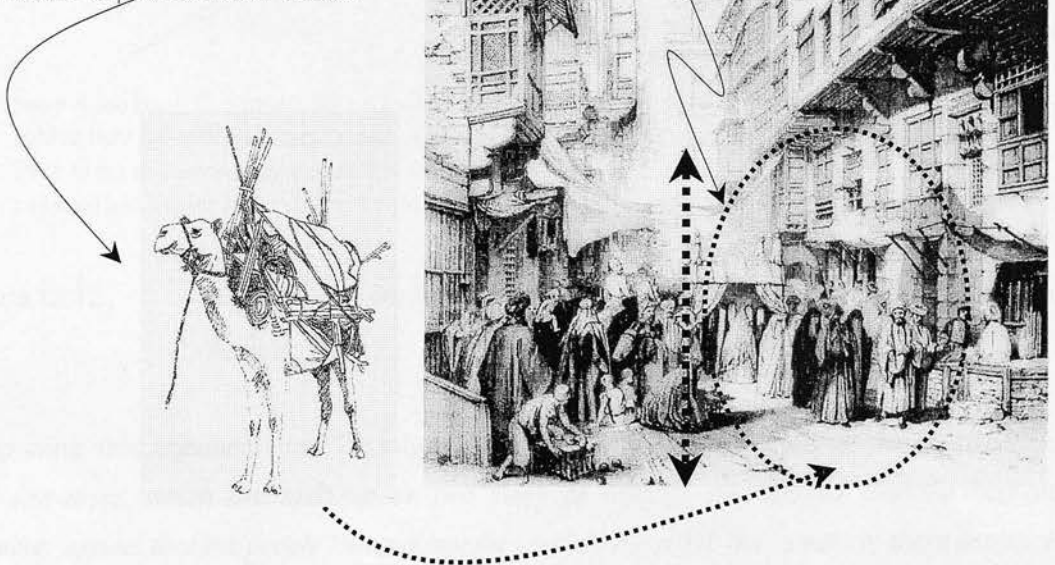


Figure 12.11 Criteria of *Tareeqh Al-Muslimeen* (Source: the Author Based on Talib, K., 1984, p.21, Islamic Cairo, p.45).

Al Wanshirisi (1981, vol.8, p.445) mentioned a case in which Ibn Abi Zaid was asked about a house in a street running West to East with a mosque opposite it, The house owner wanted to build a toilet from a wall in the direction of the street for about one cubit and half. Did this cause *Darar* to the street and the mosque, or not? Ibn Ali Zaid replied, *"I see what is taken is slight and can not be prevented in this capacity since it does not harm pedestrians"*.

If houses of two neighbours extended over the road, the owner of a house in between has the right to build on the road to keep his house parallel to the other two houses. **This action resulted in the characteristic street form of the Islamic City with its sinuous, organic bends** (see figure 12.12).

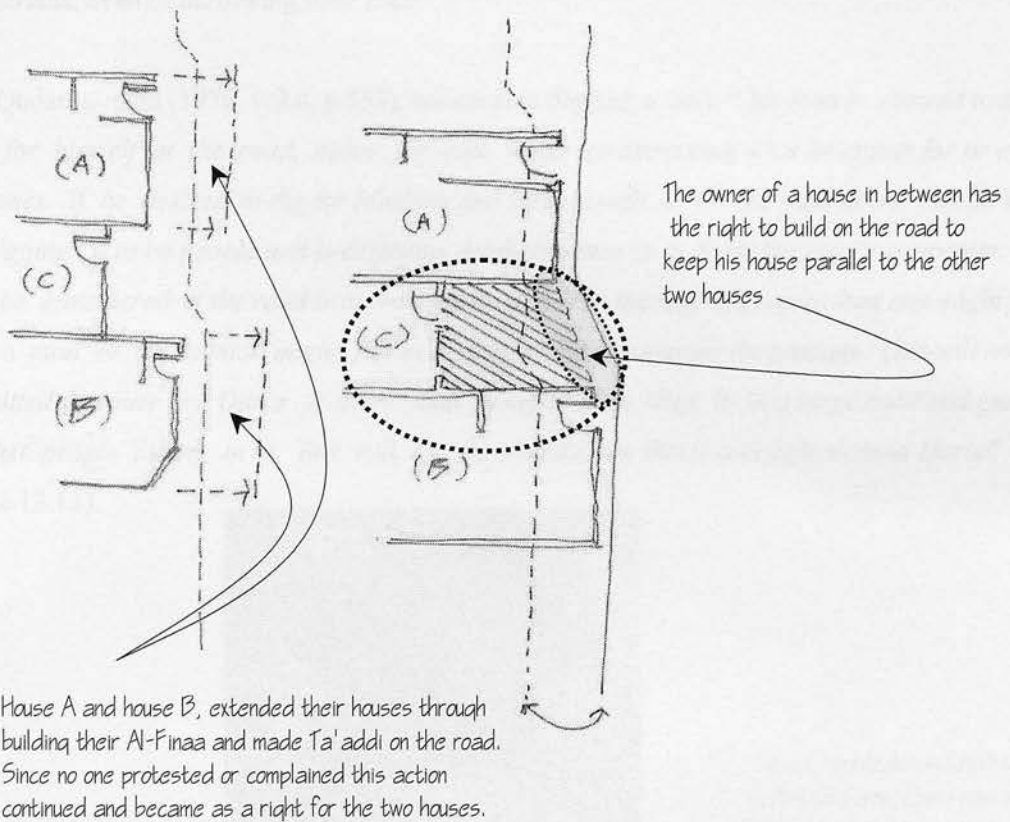


Figure 12.12 Right of the Middle Building to Extend towards the Street (Source: the Author).

Supporting this argument Ibn Taymiya (1986, vol.30, pp.401-402) said: *"As for constructions like entrances, which are built up on two sides as well as commanded onto the road and forming spaces that the people living along the road do not need, the owners of these entrances should be entitled to build in these places. If they provide a door entrance they will not be prevented"*. Ibn Taymiya added that: *"relating to bench construction, if it is destined that*

construction becomes parallel to what is on its right and left and doesn't harm pedestrians, it will be allowed".

12.4.1 Construction of what is Useful for all Muslims

Some constructions useful to Muslims, like digging and building up a well, constructing a *Majel*, enlarging a Mosque, constructing toilets for the Mosque, constructing a *Sabeel* etc., can not be prevented. Even if a pedestrian objects the construction will not be prevented because of its utility for everyone. Nor will such a building be considered to produce *Darar* for the pedestrians, even in narrowing their road.

Ibn Qudama said (1970, vol.4, p.553), concerning digging a well: “No man is allowed to dig a well for himself in the road, either for rain water or extracting what he enjoys for or other purposes. If he desires to dig for Muslims and their benefit, or for the road users' benefit such as digging it to let people and pedestrians drink its water or to drain the road's rainwater, this will be considered. If the road is narrow, or he digs it in the way of people, then one might fear that a man or an animal might fall in or that it further narrows the passage. This will not be permitted because its *Darar* is more than benefit. If he digs it in a large road and guards against people falling in it, this will be permitted since this is a benefit without *Darar*” (see figure 12.13).

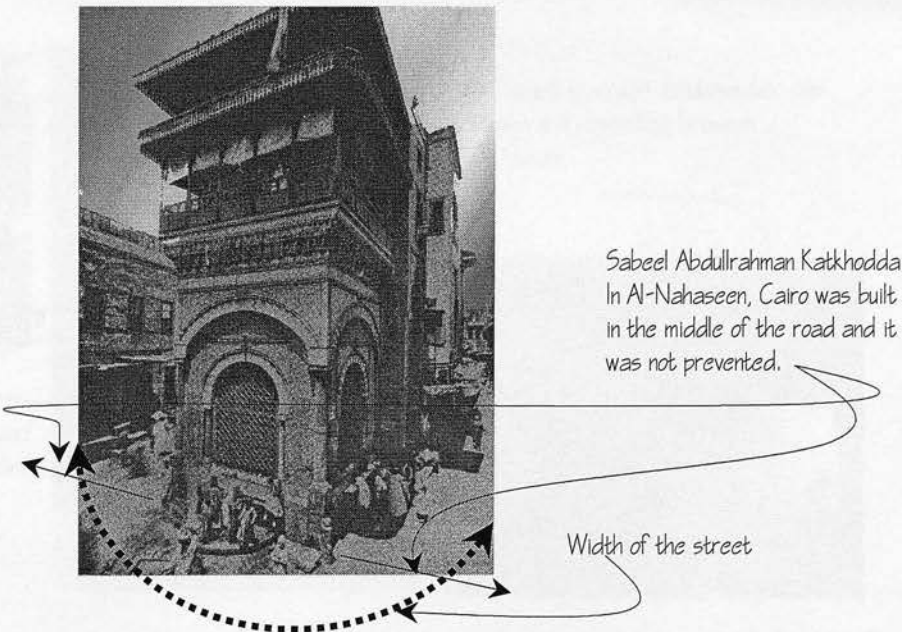


Figure 12.13 Relation between Building what is Useful and the Width of the Street (Source: Abdul Baqi I., 1991, p.56).

12.4.2 The Construction of a Mosque in the Road

Al-Sanami (1983, p.209) says: “If the road is large and local people construct a Mosque for the public which does not harm the road itself, it can not be prevented” (see also Ibn Taymiya, 1986, vol.30, pp.402-404), Ibn Rajab, 1933, p.201).

It is worth mentioning that the aforesaid rules and criteria emerged by virtue of deduction and juristic reasoning concerning the principles of *Shari'a*. The criterion of road width and height of *Sabaat* (a room bridging over the road) or window on the road is determined by the requirements of use of the road at that time. Thus, it is important to bear in mind that the roads of the traditional city were built in the past for people with capabilities that were very different from ours and dealt with level of requirements that existed at that time.

12.5 *Al-Irtifaqh* of the Road's Airspace

Al-Irtifaqh (easement) of the road's airspace concerns people's extension of parts of their buildings over the roads such as the second story as *Sabaat*, window, shade and *Mashrabiya* (oriel window). Their forms and heights over the road are decided by group agreement (see figure 12.14).

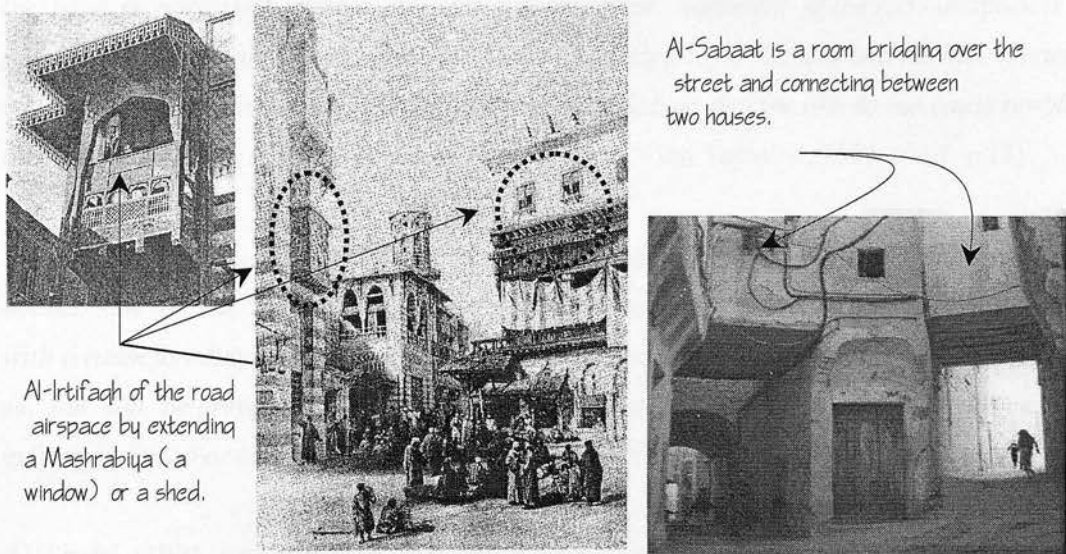


Figure 12.14

Al-Irtifaqh of the Road's Airspace (Source: Cairo, p.143, Brahim Ben Yousef, 1974, p.112).

The origin of this principle centres on one's right to use road easement without any *Darar* such as sitting in or walking down it. Thus, *Al Irtifaqh* with the subsequent air rights to the road was allowed since such use did not produce any *Darar* and was not possessed by anyone.

Ibn Qudama (1970, vol.4, p.551) said: "*It is not allowed to extend a wing that passes far over the road, whether it usually harms a pedestrian or not and whether the Imam permitted it or not*". Ibn Aqeel said, "*If it does not cause harm, it would be allowed by consent of Imam since he is the representative of the Muslims. It would be as if it was the consent of the users of the road*".

Jurists seemed to be in disagreement on the permissibility of the road airspace easement which was seen as allowed (as in Al-Shafi'iyah doctrine), prohibited (as in Al-Malikiyah and Al-Hanbaliyah doctrines), or only allowed by the Imam's permission (as in Al-Hanafiyyah doctrine).

12.5.1 Jurists' Opinion in *Al-Irtifaqh* with the Road Airspace

Al-Nawawi (1983, vol.13, p.396), in discussing constructions that spread over the road, said that: "*Al-Hanafiyyah, Al-Malikiyyah and Al-Shafeiyyah doctrines would permit this act since it was an easement of something that was not possessed by anyone and causes, like walking down the road, no harm, and because airspace comes under public decision. So whenever Al-Irtifaqh of the road is possessed without any damage or Darar, easement of the road airspace is also possessed without any mischief as well*". Ibn Taymiyyah says: "*Sabaat and the like, if harmful, would not be allowed by jurists' agreement. But if Sabaat and the like do not cause problems, then permissibility is a matter of debate among jurists*" (Ibn Taymiyyah, 1986, vol.3, p.12).

Ibn Al-Rami (1982, p.389) mentioned that: "*Sahnoon was asked about a man who had two houses, one on the right and one on the left of the road and he wanted to bridge over the road with a room forming a sitting space. Sahnoon answered that the man will not be prevented to do so, but will be prevented of making the path narrow or adversely changing it. If harm does not exist on the road or to any Muslim, this would not be prevented*".

Al Shafei (1904, vol.2, p.222) said: "*If a man extended a shed or a wing over a road and another man litigated him to prevent this, so he can reconcile this in return for something, reconciliation becomes not legal since he took from him what is not possessed. Here, the act is*

considered that if the extension is harmless, it will be carried out, but if it is harmful, it will be prevented”.

12.5.2 The Construction of *Sabaatat* (Overhangs)

This type of construction occurs when a man possesses two houses, one on the right of the road and other one on the left and wishes to construct an overhang (*Sabaat*) joining the two houses (a *Sabaat* is an overhead room bridging over the road and connecting two houses usually with one owner). And in *Lisaan Al-Arab* for Ibn Manzoor (1965, vol.2, p.87) we read: “*The Sabaat is a shed between two walls with a road underneath*” (see figure 12.15).

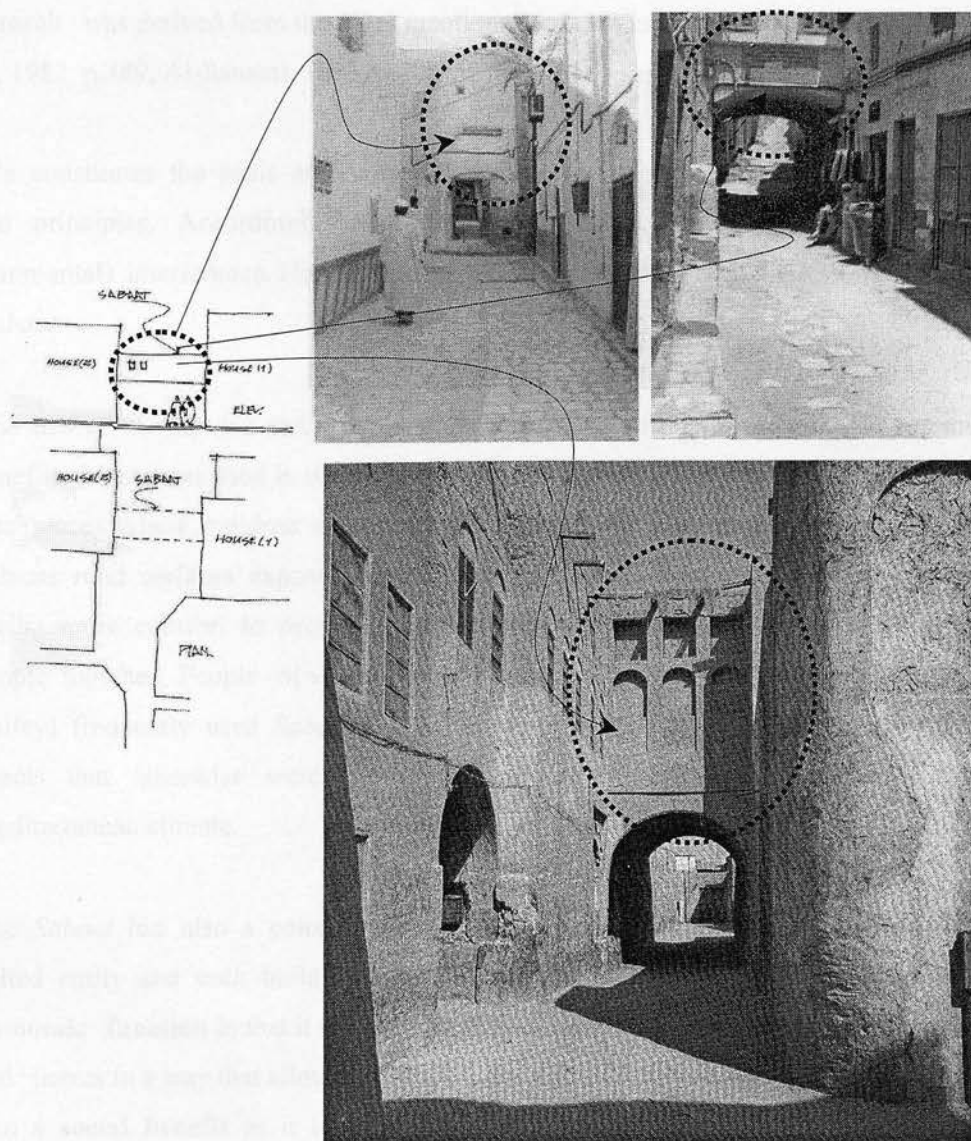


Figure 12.15 Concept of *Al-Sabaat* in the Traditional Environment (Source: Brahim Ben Youssef, 1974, pp. 115, 119, Talib K., 1984, p.82).

12.5.2.1 Principles Governing the *Sabaat*

The minimum height to the underside of a *Sabaat* is the height of a rider on the biggest camel under it. A *Sabaat* may not darken the road, block light to an alley, become an obstruction or danger for people, or impede a camel with a load from passing through.

One issue which was researched in the traditional environment was that, if *Sabaat* sinks down to become harmful to road users, should it be demolished or could the road surface be lowered under the overhang to let people pass without any harm? Most of the jurists agreed that lowering the road surface would avoid causing mischief and *Darar* to the road, but if this caused harm, the overhang must be demolished or raised until any rider can pass underneath (this result was derived from the cases mentioned in Al-Wanshirisi, 1981, vol.9, p.431, Ibn Al-Rami, 1982, p.389, Al-Sanami, 1893, p.208).

Shari'a constitutes the basis and virtue of juristic reasoning, leading to the development of certain principles. Accordingly, road height has been monitored without any external (governmental) interference. Here the author would point out some of the lessons acquired from the *Sabaat*:

- The use of *Sabaat* led to the exploitation of the road's airspace according to possible user benefits. Most areas used in streets are those under *Sabaatat* since they are shaded. These are also places where children can play. The *Sabaat* offers other climatic benefits in that it reduces road surfaces exposed to direct sunlight. The *Sabaat* has social benefits as seen in giving more comfort to people whenever their houses become tight. They also connect people together. People of villages (in particular villages spreading along Morocco's South Valley) frequently used *Sabaatat* to overcome the problem of flies and to freshen air in streets that otherwise were made hot and dry in summer months due to the South Mediterranean climate.
- The *Sabaat* has also a **constructional function** as it relates buildings to each other as a united entity and each building supports each other accordingly. The *Sabaat* has also an **economic function** in that it was used to store dates, for its floor was built from palm trunks and leaves in a way that allowed air to pass through to the street underneath. The *Sabaat* has also a **social benefit** as it is used as a passage between houses for women who otherwise would have to pass through the road. *Sabaatat* have been used again and again in traditional cities until they became a major characteristic distinguishing Islamic from other cities.

Jurists who permitted construction of the *Sabaat* agreed that if a man demolished his *Sabaat* or his *Roshan* (plural *Rawashen*), then his right of *Al Aspaqiya* has been eliminated. If his neighbour, in return, built a *Sabaat* or a *Roshan* in the same location, he has the right to do that (for more details about this point review: Al-Nawawi, 1983, vol.13, p.397).

To conclude on *Sabaatat*, the author stresses that the action formulating the road elevation is the accumulation of resolved disputes that have resulted from the application of principles of *Darar*, *Irtifaqh* and other rights of neighbours on the basis of juristic reasoning. The laws of the authorities have played no role in determining the properties of *Sabaatat*, *Rawashen* and other overhangs.

This social, climatic, environmental, constructional and economic solution has not emerged from engineers' thoughts nor planners' systems, but as a result of an accumulation of environmental experiments for those who experienced the environment and who lived inside it and knew its problems. Through this accumulation of experiments, doctrines have been formulated and *Shari'a* has set the framework which brought about this important public benefit.

12.6 Opening Doors in *Tareeqh Al-Muslimeen*

The opening doors in the traditional Islamic Cities brings forth some important rules which differ in their concepts from those that apply to main roads (*Tareeqh Al-Muslimeen*) or to the minor dead end roads (*Hara*, *Zoqaq* etc.). The author now explores the most widely used concepts regarding opening a door onto a street.

12.6.1 Rule of Opening the Door in *Tareeqh Al-Muslimeen*

Opening a door in *Tareeqh Al-Muslimeen* comes under the rule of *No Darar and No Dirar* and whether the door would impinge on his neighbour's rights of *Sutra* (cover) and *Khososiya* (privacy). This situation is a responsibility left to the decisions of dwellers by jurisdiction as discussed and elaborated in (*No Darar, No Dirar*).

12.6.2 Concepts of Opening the Door onto *Tareeqh Al-Muslimeen*

The right to open a door onto the road is governed by the following four undertakings:

- It would be prohibited if there was any *Darar*
- The position must be changed if it is harmful to a neighbour. This is known as *Al Tankeeb*.
- It is allowed in a wide road full of passers-by.
- It is allowed in the narrow street if it has a bent entrance.

Ibn Al-Rami (1982, pp.320-321) summarised these differences in his discussion about a man who wanted to open a door in a lane that was not a dead end, or on a main open street. He said that opening a door implies that either it comes opposite to his neighbour's door, very near to his neighbour's door or neither, in which last case it is allowed by all means. In the event that it is near his neighbour's door there are two possible opinions. In situation where it is opposite to his neighbour's door there are four opinions.

- When the door is near a neighbour and does not produce any *Darar*, its harmlessness has to be proved, but in case of producing any *Darar* intentionally like exposing his house entrance, it will be prevented.
- When the new door is opposite to his neighbour, Sahnoon (1979, p.234) quoting Ibn Al-Qassim, said: "*If the road is wide and open, he has the right to open anything whenever he sees fit*". Judge Ibn Al-Rafie (n.d, p.106) stated in his inclusive comment: "*This is allowed in Sha Allah*". In another opinion, Ibn Wahb (n.d, p84) said: "*If the road was vast, full of passers-by to the extent that the neighbour and the passers-by are the same, the owner shall not prevented from opening opposite the door. If this is not the case, he is prohibited*".
- A third opinion is from Ashhab (n.d, p.207), he said that: "*Malik was asked about a road common to the people, in which someone wanted to open a door opposite to his neighbour or perhaps beside it. Malik said: 'If it is so harmful that the neighbour's interior acts may be seen, he is not allowed to do that'*". The same was said by Ibn Al-Qassim in the Book of Ibn Abdul-Hakeem and Ibn Kenana.
- The fourth opinion is from Sahnoon (n.d, p.184). Ibn Habeeb asked Sahnoon about a man who opens a door opposite to his neighbour in the road. He said: "*'He should be stopped from doing that or made to move his door aside [Al-Tankeeb]. Ibn Habeeb asked, 'How far...?' He said, 'To the extent that he should not disturb his neighbour, unless the road is*

very vast so that he can see more than what he may see in the street, then he may open whatever he wants' ”.

Ibn Al-Rami (1982, p.321) said: *“What is well known to us and been done before is that as long as the road is very wide, a person shall have every right to open the door even if it was opposite to the door of his neighbour”* and he added (p.323): *“Thus, the judge Ibn Al-Rafie resolved a dispute between two men. One of them opened door opposite to the other’s door. The other referred the case to the judge then the judge said: ‘The road is open, wide and full of passers-by?’ The man said ‘Yes’. The judge said: ‘You can not prevent him’. The man said: ‘His door was narrow but now it is bigger than before’. The judge said, ‘Let him open the whole wall’ ”.*

Ibn Al-Rami defines the narrow road as a lane less than seven cubits wide, in which case then it is harmful to open any door opposite of another one.

12.6.3 The Development of *Urf Kashef Al-Darar* (Custom of Revealing the Harm)

The multiplication of cases and disputes that happened between dwellers led to the convention of first investigating and then applying the custom of revealing the harm known as *Urf Kashef Al-Darar*. Al-Wanshirisi (1981, vol.9, pp.20-21) mentioned that: *“Often one faces a difficult situation between him and his neighbour due to opening a door opposite his own on a narrow street”*. Ibn Al Rami (1982, pp.322-325) said that: *“The consideration of the existence of Darar is assessed by standing on the threshold at the position of the hinges of the house producing the Darar. If the people are exposed from the back, the prohibition is rightful. But if the people behind the door are unseen, it is different and there is no reason to prevent the opening of the door because they are in a similar situation as the passers-by”* (see Figure 12.16).

Urf Kashef Al-Darar is determined by standing in the place of hinges of the house producing the Darar.

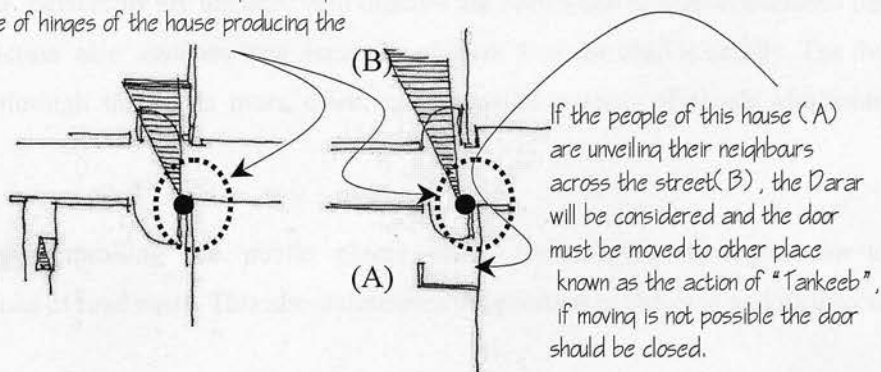


Figure 12.16

Urf Kashef Al-Darar (Source: the Author).

The development of the conventions for ascertaining the *Darar* was made due to different situations. Thus, the rules were applied differently in accordance with diverse cases and in the siting of each different opening in response to the following considerations:

- Due to privacy, changing the locations of doors or windows (the act of *Al-Tankeeb*) became customary.
- Due to the different sizes, categories and shapes of roads.
- Due to the diverse harm which differs from one house to another.
- Due to the different relationships between the neighbours.
- Those who determined the fate of shops as architectural elements effective in the road shape and form and those who determined the position of doors and other facilities are the inhabitant, not rules and regulations or centralised authority.
- The passers-by in the road did not interfere in the dweller's affairs on the road.

A common phenomenon arose from the judgement of disputes between the dwellers like in opening doors, windows, or grocery shops, constructing a *Roshan* or a *Sabaat* or utilisation of a forecourt, or the encroachment of a house into a right-of way and this had an environmental benefit. The judgement did not take into consideration what would happen to the man who produced *Darar* if *Darar* happens to him (according to the judgement by closing a door or a window he has newly produced) or having a new *Sabaat* demolished.

12.6.4 Summary and Results

- *Tareeqh Al-Muslimeen* is a place owned and controlled by the Muslim community. The jurisdiction gave the passers-by the right to prohibit anybody who may cause them any *Darar*. The passers-by are the ones who observe the events due to their continuous passage. The jurisdiction also assumes that removal of harm from the road is charity. The dwellers who pass through the roads more often, constitute the majority of people who control the streets.
- The parties controlling the public places differ from region to region due to the concentrations of road users. This also determines the position of the road and its direction.
- The greater number of the passers-by in the road spreads responsibilities across more individuals and therefore the public areas have a flexibility and tolerance, which is known as

Leena, due to differences between a roads in their rights-of-way. The number of passers-by is often proportional to the number of objections. The increase of the numbers of the passers-by means the increase of the *Leena* for *Al-Tareeqh* and the decrease of the passers-by means the decrease of the *Leena* for *Al-Tareeqh*.

- The *Leena* refers to flexibility of the formation of the road and the extent of tolerance in determining its features. This is composed of the behaviour of the passers-by and the events of the dwellers about the road. Since this is the case it is the disputes and agreements among the dwellers and the passers-by that actually gives each road its concept of the *Leena* and in the passing of time the very character of the roads.
- Change in roads over the centuries are thus the actual history of urban development eventually making the principles of urban composition well-known and an integral part of the community that created the road. Once the road can no longer be narrowed indicates that it has no more *Leena* to add to or to reduce its width.
- Roads in the Islamic Cities has been narrowed over the course of time from a wide street exceeding in its *Leena* the actual needs of its passers-by, to a road which more compactly accommodates the uses of its passers-by in a reduced space between an increased building mass. In this way the road matures until it reaches a minimum width amenable to the needs of the passers-by. Thus, it is a reflection of the desires, capabilities and values of the dwellers and has been changed to its optimum capacity. In this way, the development of the road emanated from the accumulated decisions of the community, made on a basis of priorities of behaviour and deeds. This controlled the existence of *Hiyazat Al-Darar* upon which the environmental affairs reached stability as shown by the level of activity in the road.

12.7 Important Comparison

- The environment reflected accurately the affairs of users (dwellers and passers-by) and this was completed over the course of time and incurred no costs or put on burdens on the society as it required no Ministries, employees, papers, stamps, courts, issues, disputes, funds or salaries.
- In the present environment the passers-by and users of the environment are ignorant of their rights to the extent that they do not shoulder any architectural or urban responsibility. The

authorities instead have taken these responsibilities from them. Decisions always come now from the highest authorities down to the users, yet it is the other way around which characterises the basic ingredients needed for the traditional environment. Also, use of *Shari'a* makes the users of the environment conscious of all environment affairs and covers all situations which every road has to deal with as a unique urban entity.

12.8 *Al-Tareeqh Gha'er Al-Nafiz (Cul-de-sac)*

The cul-de-sacs in the traditional environment are known by different terms from place to place but all of them describe a concept and a right of establishment found in a unique concept hidden in the rules of *Shari'a*. An examination of these rules shows how the cul-de-sac was formed, the way it was built and the rights associated with it that have been allocated to its dwellers, in other words its owners.

12.8.1 Introduction

The scholar of Islamic Cities all over the world might be surprised by the ubiquity of the cul-de-sac phenomenon. This has led to many to believe that the cul-de-sac in the traditional environment originated for social, climatic or security reasons. The literature indicates that many principles of *Shari'a* relating to ownership are among the salient forces that brought this phenomenon into being. This notion seems to be specially well documented in discussions of who has the right to use and manage this type of street.

12.8.2 Definition of *Al-Tareeqh Gha'er Al-Nafiz*

Al Tareeqh Gha'er Al-Nafiz is a road with a dead end at one terminus and that belongs to a certain number of people, regardless of how it was formed.

12.8.3 Different Names for *Al-Tareeqh Gha'er Al-Nafiz*

Al Tareeqh Gha'er Nafiz (dead end road), *Al Tareeqh Al-Mushtarak* (common road), *Zanqa* (lane), *Darb*, *Zoqaq*, *Sickka*, *Za'igha*, *Ra'igha* and *Hara* (alley).

12.8.4 Creation and Establishment of *Al-Tareeqh Gha'er Al-Nafiz*

Al-Tareeqh Gha'er Al-Nafiz could be either blocked or kept open to serve the individuals who originally vitalised it for their own use. This often happened when a specific family or professional group settled in a particular urban area. Sometimes it emerged through accumulated decisions of some parties who preferred to have separate lands with their own dead end streets.

12.8.5 Ownership of *Al-Tareeqh Gha'er Al-Nafiz*

There is an explicit principle of jurisdiction about the ownership of the cul-de-sac and the right of using it. This is that the cul-de-sac is considered in *Shari'a* as coming under the ownership of the dwellers. The dwellers of this road are recognised to be its principal inhabitants or participants. For example the wording of Ibn Qudama (1970, p.553), concerning the inhabitants of the dead end road, said: "*If the inhabitants of cul-de-sac permitted the thing, it is then acceptable or becomes lawful*". The idea of 'participants' or 'partners' appears in the words of Al-Sanami, (1983, p.203): "*Inhabitants of the road are those who own real estate, buildings inside the road and have the right to participate in it*".

12.8.6 *Haqh Al-Istitraqh* in *Al-Tareeqh Gha'er Al-Nafiz*

The right of using the forecourt applies equally to the cul-de-sacs. Dwellers have the right to utilise the cul-de-sac on condition that they do not produce any *Darar* to the passing people, since it is common. The inhabitants of *Al Darb* or *Al Zoqaq* are free to utilise the road more than those who live along an open road.

12.8.7 The Control on *Al-Tareeqh Gha'er Al-Nafiz*

The rule on using an alley is that nobody is allowed to do something in that road without the approval of the partners. For example, opening a shop, making an extension, building a *Sabaat* or digging a well. That means that the authority is in the hands of dwellers (see Ibn Taymiya, 1986, vol.3, pp.8-9). In *Al-Tareeqh Gha'er Al-Nafiz* the harm is not considered and the partner's permission is deemed granted (Al-Sanami 1983, p.208, Al Kasani, 1986, vol.6, pp.265-267).

Actions in *Zaher Al-Tareeqh* which affect the road pattern like opening a window or constricting a *Roshan* or building a *Sabaat* also need the approval of the partners.

Shari'a established various means to control *Al-Tareeqh Gha'er Al-Nafiz*. If nobody spoke about any action done by someone, there was implied consent to what had been done (see event in Al-Wanshirisi, 1981, vol.8, p.447, vol.9, p.63). Otherwise, the approval of all dwellers would be needed on an action on *Al-Tareeqh Gha'er Al-Nafiz* (for instance an entrance gate to the road).

Ibn Al Rami (1982, p.336) said that there were some buildings for a man in a *Darb* and only one building for another man. The owner of the first buildings made a gate across the entrance of the road. The owner of the single house complained and referred his claim to the judge. The judge ordered the door to be removed due to the disagreement of one of the dwellers. Therefore, Ibn Al Rami said: "*The judge appointed me to remove the door. I went to the location and found no one to talk to. Then I went back to the judge to tell him there was nobody to talk to. He re-confirmed the same and to sell from the wood what was equal to the labour*" (see figure 12.17).

The owner of buildings in the *Darb* made a gate across the entrance and attached to one of his houses in the entrance of the *Darb*.

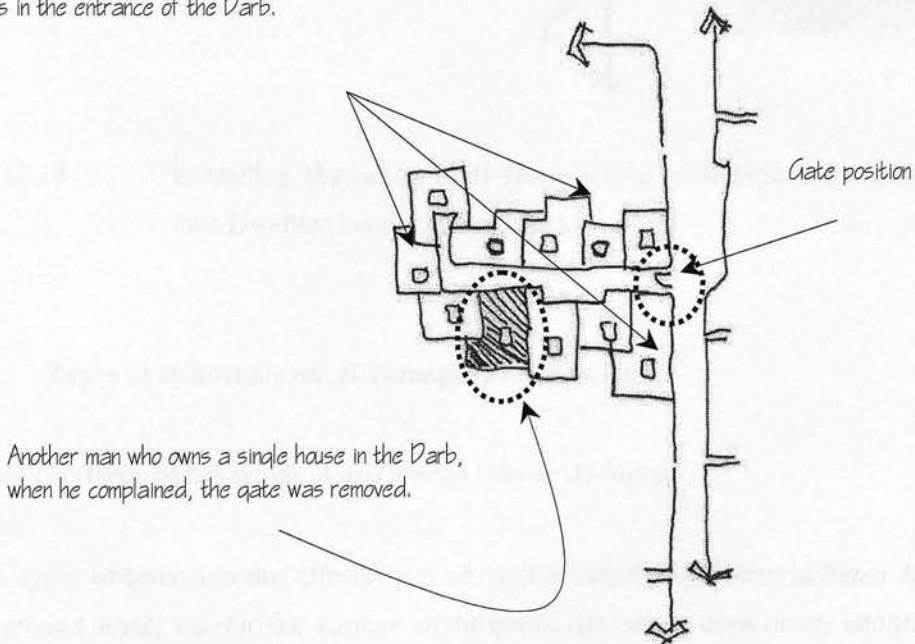


Figure 12.17 Effect of Disagreement of One Inhabitant on the Actions in *Al-Tareeqh Gha'er Al-Nafiz* (Source: the Author).

Shari'a also allows control concerning behaviour and the harm: “ ‘A scholar was asked about a man who owned all the buildings in a cul-de-sac except for one forecourt at the end of the road. The man had a Sabaat at the beginning of the road and wanted to make an extension of it up to the end of the road. However the owner of the forecourt prevented him’. The scholar replied that: ‘If the owner of all the buildings constructs the arches up to a height and it does not harm the passers-by or affect the light of the road, he has every right to do so and his neighbour has no right to object. But, if it is likely to affect the light at the dead end road which will cause harm to the passers-by, then the neighbour does have every right of objection as long as he is one of them’ ” (see figure 12.18).

The owner of this forecourt prevented the extension of the Sabaat.

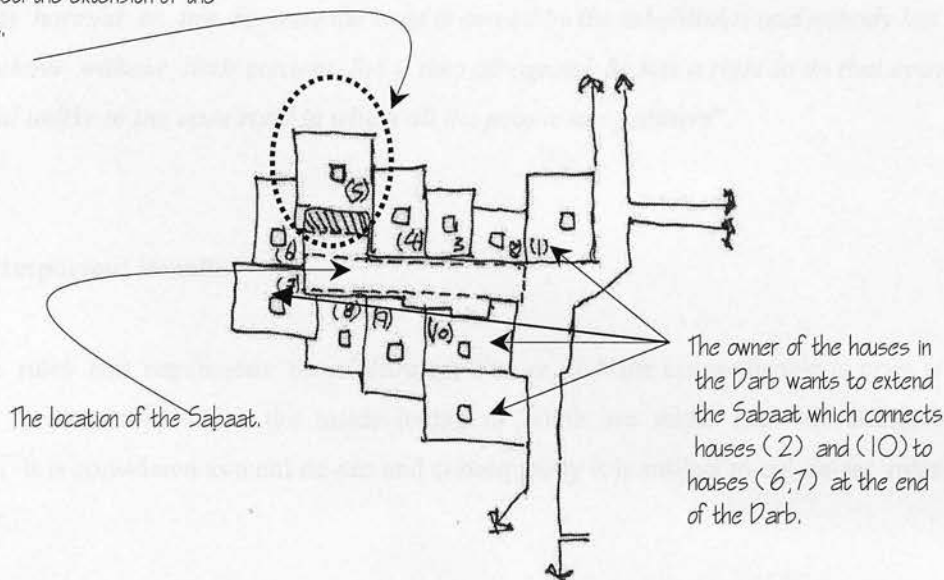


Figure 12.18 Extending the Sabaat in *Al-Tareeqh Gha'er Al-Nafiz* and the Objection of One Dweller (Source: the Author).

12.8.8 Types of Behaviour on *Al-Tareeqh Gha'er Al-Nafiz*

There are two types of behaviour in *Al-Tareeqh Gha'er Al-Nafiz*:

- One type of behaviour that affects the road itself is called a behaviour in *Baten Al-Tareeqh* (at ground level, i.e. on the surface of the road). Any action done or any addition into the road is considered an innovation and therefore, two points of view can be followed depending on whether the innovation is harming all residents (for instance digging a well at its entrance, or building a gate etc.) if the act affects all residents then permission from all

inhabitants of the road must be obtained. If it affects only a specific group only their objections will be considered.

- Second type of behaviour is one that affects the road but is not in it and this is called behaviour in *Zaher Al-Tareeqh* such as opening a window, a door or building a *Roshan* or a *Sabaat* that may harm some of the road inhabitants. Again the objection of those who may be harmed will be considered. Judging the action is subject to the principle of harm.

Al Abbadi (1974, vol.1, p.256) quoted Al-Mawirdi: “*If the road is a dead end, nobody has any right to make an extension into it prior to taking permission from all others whether this extension is harmful or not, because the road is owned by the inhabitants and nobody has any right to behave without their consent. But if they all agreed, he has a right to do that even if it was harmful unlike in the open road in which all the people are partners*”.

12.8.9 Important Benefits

The above rules and regulations for *Al-Tareeqh Gha'er Al-Nafiz* are applicable to open areas, yards and forecourts in which the inside length or width are wider than the entrance. In jurisdiction it is considered as a cul-de-sac and consequently it is subject to cul-de-sac rules and regulations.

If the entrance of the road is wider than its internal area, it is considered as an open area and it is still subject to the rules of *Tareeqh Al-Muslimeen*, which differ greatly from the rules applied to *Al Tareeqh Gha'er Al-Nafiz* (for more details about the different types of the dead end roads review Ibn Abdeen, 1979, vol.5, pp.446 - 448).

12.9 Doors and Their Relationship with *Al-Tareeqh Gha'er Al-Nafiz*

The existence of a door on the cul-de-sac implies the owner of the house owns the road and means he has the prior right to pass through the road. Therefore the houses that have no door in the cul-de-sac (but only blank walls) can not be considered as members of the community of owners of the road (Ibn Al Rami, 1982, pp.328-329, Al Wanshirisi, 1981, vol.9, p.10). Opening a door on the cul-de-sac allows the possibility for intruding upon its owners. Thus, this act will need their permission and agreement. Houses that had two doors (one in the open road and one

in the cul-de-sac) had much more value than those with only one because they allowed shortcuts for their occupants (Ibn Al-Rami, 1982, p.329) (see figure 12.19).

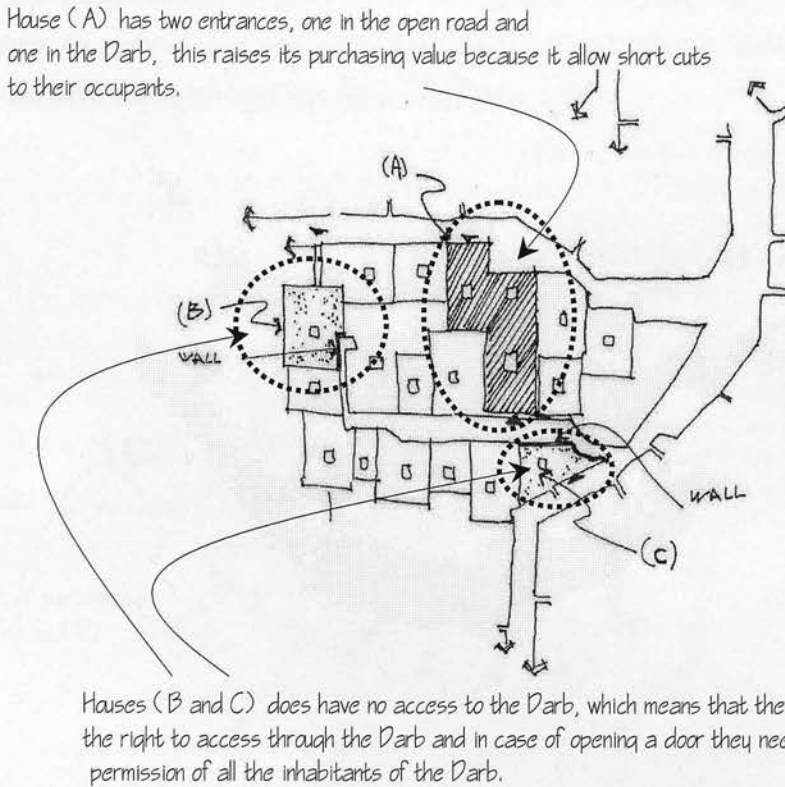


Figure 12.19 Doors and Their Relationship with *Al-Tareeqh Gha'er Al-Nafiz* (Source: the Author).

There are many rules covering the events of opening doors on cul-de-sac. They are covered under harm principles. Opening the door is a unique case unlike building a *Roshan* or constructing a *Sabaat* because door needs the agreement of all users. Since a door or a new opening required full participation by all the owners, it was an important element of community development.

The rule of Al-Izz Ibn Abd El-Salaam was approved by all doctrines and was applied to all cases and disputes that happened between the inhabitants of *Al Tareeqh Gha'er Al Nafiz*. It states that: "The doors opened in the cul-de-sacs prove the partnership in the road to the limit of each door. The first is a partner from the beginning of the road till his door, the second, a partner from the beginning of the road until his second door and so forth until the last one that will be a partner from the beginning of the road until the last door" (Al-Izz, S, 1979, p.118) (see figure 12.20).

It is not rightful for any house owner who has one door in the cul-de-sac and another on the open road to use the cul-de-sac as a route without a permission of the other dwellers, because giving the choice to the passers-by to pass through the cul-de-sac, which is a private ownership gives them the right of road usage. And they have no right to do that. Indeed, the dwellers of the cul-de-sac have the right to prevent them (see figure 12.21).

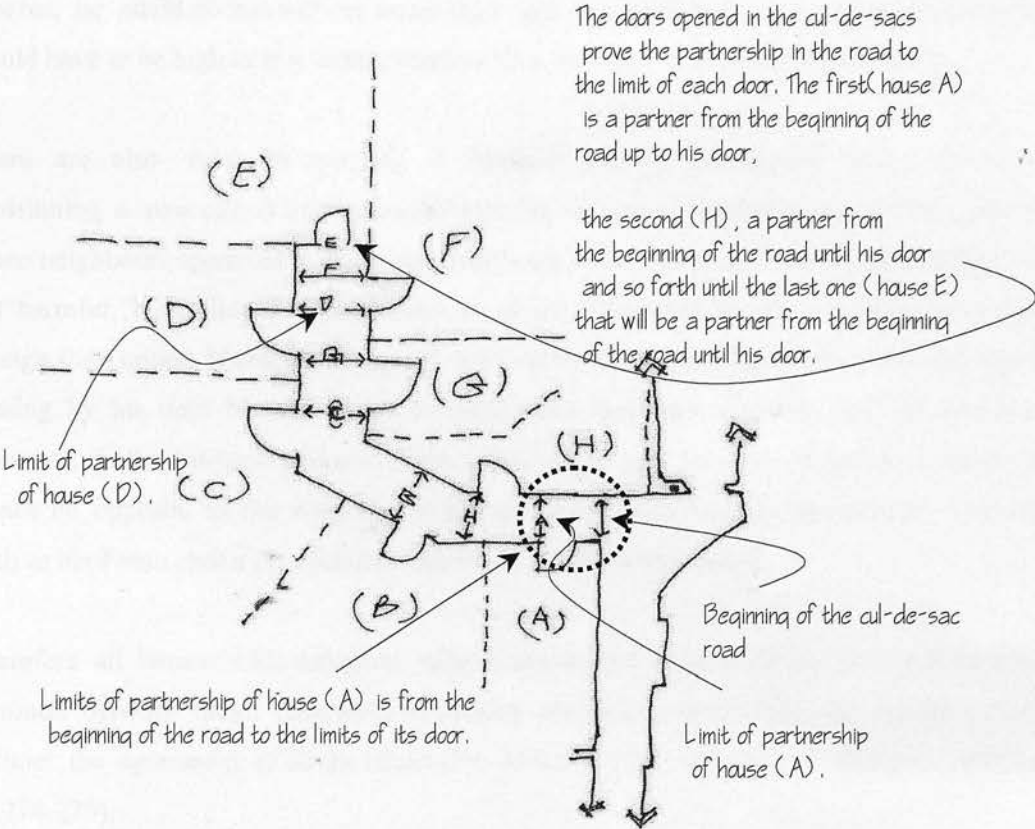


Figure 12.20 Doors and Partnership of the Cul-de-sac (Source: the Author)

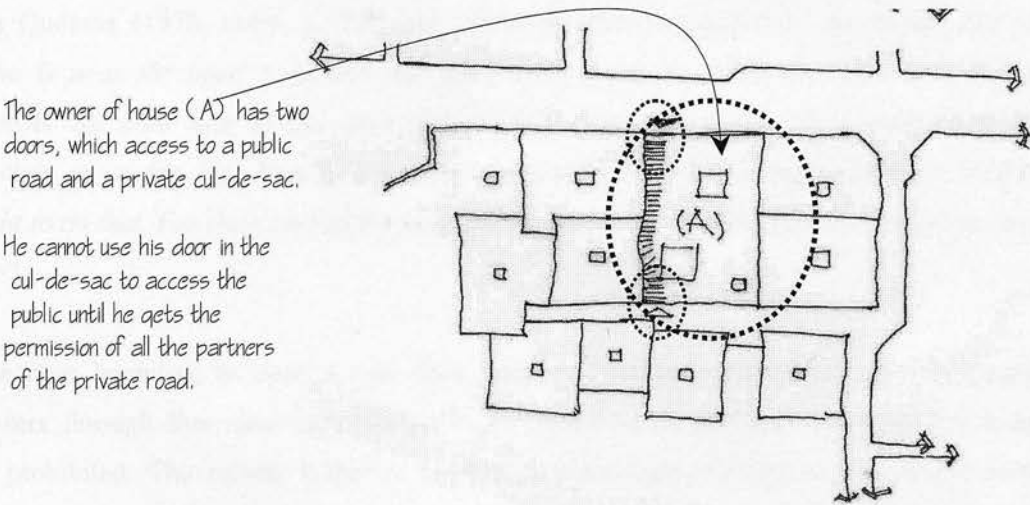


Figure 12.21 Prohibition of using Doors in the Cul-de-sac for the Public without the Permission of its Partners (Source: the Author).

12.9.1 Situations of Doors and Windows in *Al-Tareeqh Gha'er Al-Nafiz*

All scholars agree that no right can be given to anyone who does not have a door in the cul-de-sac to pass through it. If he wanted to make a door, he could not do it without the permission of the road dwellers, and, if by opening the door, he wanted to bring more light into the house or breezes, he could do that without receiving a right of access. In this case, however, the opening would have to be high as if it were a window (Ibn Abdeen, 1966, vol.5, pp.445-446).

There are also rules for applying *Al Tankeeb*, moving the position of an old door and substituting a new one. If this harms the opposite cul-de-sac dweller, it is prohibited even if the other neighbours approved it. Their approval is not considered since they are not harmed. If it is not harmful, it is allowable by consensus of all inhabitants and they would have no right to change their minds. If only some agreed, it would be allowable if those who permitted him were passing by his door to their doors or should not make the opening until all are satisfied. However, if all inhabitants prevented him, either he can open the door under the condition that it is not opposite to the neighbour's door and does not impinge on any neighbour's facilities such as his *Finaa* and/or his *Hareem*. Otherwise it will be prohibited.

Therefore all houses with entrances onto a cul-de-sac have facilities and benefits which are common between them. Individual occupants are not allowed to make any change in the road without the agreement of all the others (Ibn Al Rami, 1982, pp.326-328, Shanon, 1978, vol.4, pp.274-275).

Ibn Qudama (1970, vol.4, p.570) said: "*If two men had two doors on a cul-de-sac, and one of them is near the open road and the other one is inside the cul-de-sac, the nearer one has to transfer his door next to the door of the road, because he has the right of using the road that extends up to his old door. If he wanted to return his door to its previous position. He has the right to do that. For the owner of the second door inside the Darb had the same right as the first one*".

If a man intending to open a new door onto a cul-de-sac wanted to increase the number of passers through that door rather than using an open road, all four doctrines agree that it should be prohibited. The reason is that the application of the right of *Al-Istitraqh* to the cul-de-sac is confined to its inhabitants, thus those whom were not among its inhabitants were not allowed to pass through (Al-Nawawi, 1983, vol.13, p.412).

If a man has two houses, each with a door to the road, and he removed the dividing wall between the two houses so that they became one house, the owner has the right of *Al Istitraqh* from each door. But he may be prevented from exercising this right if he placed a door between the two houses or made a passage between them because this will lead to a proof of preemption (this subject will be dealt with in detail in the next chapter). Otherwise the person may prove the right of *Al Istitraqh* through the road which is not passable from a house that has no access through it.

12.9.2 Constructing a Gate Harmful to the Neighbour

Is it allowable to build a gate at the beginning of the road on a wall that could be damaged by movement and vibration of the door or its rotation? A particular case that addresses this was mentioned by Ibn Al-Rami, (1982, p.336): “*In consensus, all the inhabitants of a cul-de-sac decided to establish a gate at the beginning of their road, but it was hinged to a wall of someone who had no right of using the road itself as he had no door to it. The man raised the complaint due to the harm of air [possibly meaning the rotation of the door due to opening and closing it] and thus the wall also vibrated because of it. The judge Abu Isshaqh Ibn Abdul Rafie ordered the gate to be removed and it was done*”. In other words, he applied the principle of *Darar* and *the harm must be removed*.

12.10 Benefits of the Diversity of Cul-de-sacs

The relationship between the inhabitant and neighbours is much stronger if it involves sharing in the cleanliness and maintenance of the road as a common responsibility. One of the most important features resulting from this is the rarity of open public areas that need to be maintained by Muslims. Addressing this need consequently led to the reduction of costs for maintaining the traditional city because these spaces were considered to be the property of the inhabitants.

12.11 Conclusion

- In accordance with the examples listed above, it becomes clear that the right of disposition is governed by rights of pedestrians of the street and that *Tareeqh Al-Muslimeen* has certain

regulations in addition to those that apply to cul-de-sacs. Rules of *Darar* govern all actions and dispositions in Muslims' streets. If somebody complained about what a person intends to do, before it is initiated, it can be prevented. And, if the complaint took place after construction, the structure could be demolished as ordered by a judge, although each incident has its own circumstances. **This last point implies that as each case is unique, one cannot make a generalisation of the rules to render rote solutions for shaping the roads.**

- This last fact is often overlooked in urban research of the traditional environment, thus implying that since no universal planning 'law' or principle can be found, then only chaos and lawlessness are the basis of such development.
- It is worth mentioning that the aforesaid rules and criteria emerged by virtue of deduction and juristic reasoning of the principles of *Shari'a* and that even the criterion of road width and height of *Sabaat* (overhead room bridging over the road) or window on the road is determined by the requirements of use of the road at that time. Thus it is important to bear in mind that the roads of the traditional city were built in the past for people with capabilities different from ours and dealing with the requirements of that time.

PART FOUR

Other Aspects of Ownership

CHAPTER THIRTEEN

Ownership by Assignment, *Al-Shofa'a* and Transactions

13.0 Introduction

As explained in previous chapters, *Ihya'a* and its principles formulated the basis of the formation of the Islamic City as it now appears. With *Ihya'a* and its conditions of *Al-Hareem*, *Al-Irtifaq* and rights of neighbourhood (which affected the environment according to principles laid down through the application of *Al-Shari'a*), conventions and customs flourished and evolved through hundred of years.

One important thing to notice is that *Ihya'a* and *Iqta'a* and their attached principles only deal with the initial establishment of ownership and demarcation of land. This aspect of ownership, with its related concepts, was the focus of the previous chapters. Yet ownership has two other parts to it as well as covered in Part Two: 1) *assignment* of ownership to others (either by virtue of charity, *Omra*, mortmain and so forth) or 2) by retention from others after death on the basis of the rules of inheritances known as *Al-Fara'ed* (see figure 13.1).

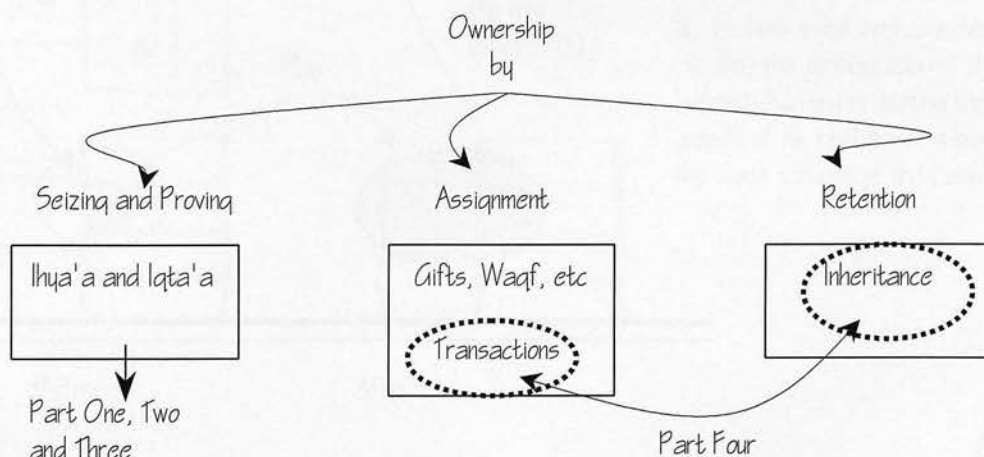


Figure 13.1 Other Aspects of Ownership (Source: the Author).

This chapter explores the extent that these types of ownership had on the built environment of the Islamic City. Some might argue that the minute details of ownership assignment would have

no effect on the physical city. However, this research indicates that such concepts had a great impact on the formation and formulation of the Islamic City. These principles also created an environment with in-built tolerance (*Leena* of buildings) which preserved many properties over hundred of years with minimum damage and maximum flexibility (see figure 13.2).

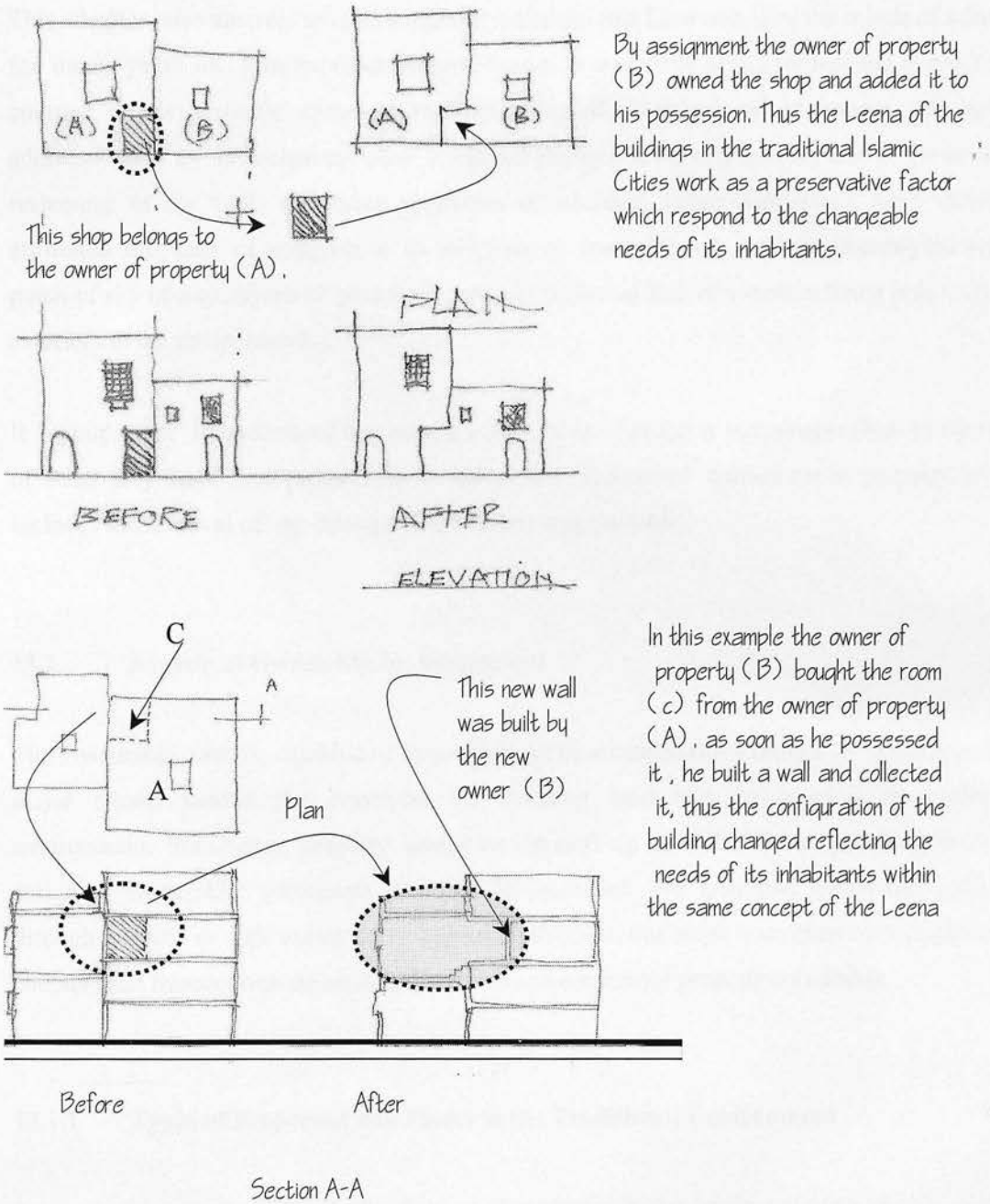


Figure: 13.2 Concept of the *Leena* of Buildings which preserved the Traditional Environment with Minimum Demolition and Maximum Flexibility (Source: the Author).

The rule of *Leena* kept the properties in the traditional environment continuously preserved. Through being assigned among the owners of properties it guaranteed and secured the right and freedom of all owners to sell and/or buy any piece of these properties through out all ages and locations.

This chapter also answers several important questions that have occupied the minds of scholars for many years on how the outer shape of houses is invariably asymmetrical and polygonal in contrast to the perfectly square or rectangle internal courtyards of all houses. The author addresses this by investigating how territorial changes in the city are reflected in the constant reshaping of the walls separating properties of *Al-Amer*. Other researchers have variously attributed this lack of congruence to religious or cosmological reasons (likening the square patch of sky of a courtyard to 'paradise'), or to a traditional lack of attention being paid to house exteriors in the environment.

It is important to understand that people's ownership of property encourages them to take care of what they have and preserve it by all means. Initiatives carried out by property owners includes the removal of any damage in the fastest way possible.

13.1 Aspects of Ownership by Assignment

The ownership that is established by assignment or retention (for example by inheritance) is a major reason behind the principles for dividing land and buildings in the traditional environment. Sometimes property would be divided up or reduced, as per the terms of the assigned ownership; sometimes it would be increased. For example, ownership conferred through charity or gift entails two aspects of *division*, but *Shofa'a* (explained in detail in this chapter) and transactions are aspects of *joining* and *combining* property ownership.

13.1.1 Types of Properties and Places in the Traditional Environment

From the viewpoint of *Shari'a* the division of properties in the traditional environment includes three types: 1) divisible properties and places without any *Darar* (in which usage of each part of the property is to be retained after division), as happens in houses divided by charity or otherwise; 2) divisible properties, which would result in *Darar* and harming their owners, like the division of toilets between partners; and 3) properties which cannot be divided and that

could not be utilised as before, were they to be divided, such as the division of a quern (Ahmed, 1935, p.260) (see figure 13.3).

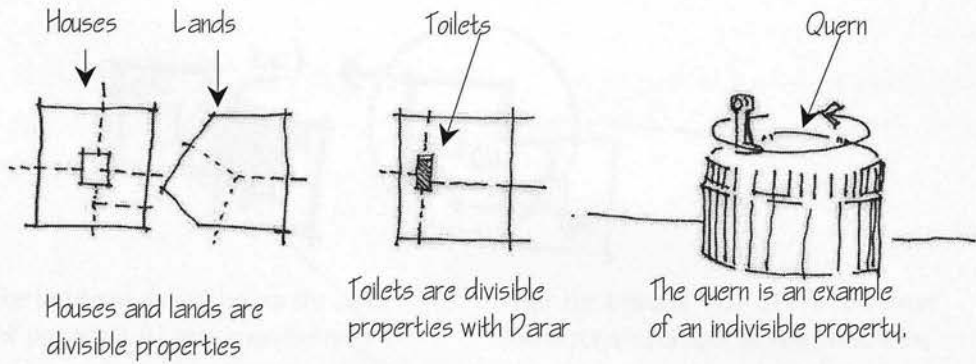


Figure 13.3 Properties and Their Appropriateness for Division (Source: the Author).

13.1.1.1 Ownership Assignment by *Al-Sadaqh* (Charity)

Al Sadaqh represents the gifting (or receipt) of a property on a free and immediate basis in order for the giver to find favour from Allah ﷻ. This can not be returned after being given. The Prophet's Hadith in respect of the *Al-Sadaqh* persuaded people to give charity, which would also include their properties, for the poor and needy. Thus it was narrated by the Prophet Mohammed ﷺ who said: *"the one who gives charity out of good the Prophet and Allah will not accept anything but good as it is given and put in the hands of Allah to be raised as any of you who raises a foal or a young camel until it becomes like mountain"*. It is also narrated that Prophet Mohammed ﷺ said: *"Give to the one who asks even if he is riding a horse"* (Malik, 1983, pp.703-705). It is also said in the Holy Quran (2, 271) *"If you reveal charities, that is good and if you shelter and provide for the poor it is better for you"*.

Thus the *Al-Sadaqh* in the traditional environment took place for children, relatives and others. There are therefore many cases and events in residential areas that refer to charity being carried out that relate to parts of properties. This act was common in the traditional environment (for more details review Al-Wanshirisi, 1981, vol.9, pp.124-242).

Giving by charity affected the environment through the distribution of wealth throughout society. It also increased the number of owners in the environment and created new patterns of territorial division between properties. It is important to recognise that this greatly affected the

character of the environment and resulted in the continuously changing linear territorial divisions (see figure 13.4).

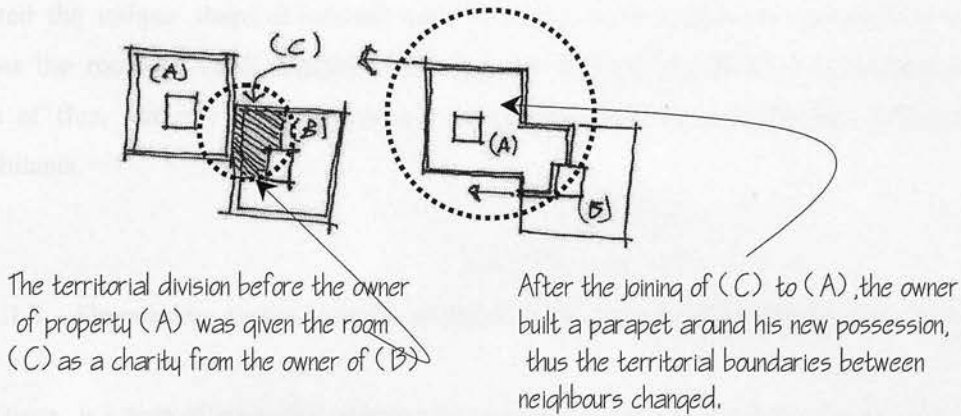


Figure 13.4 The Influence of the Charity on the Division of the Properties and Changes in the Traditional Environment (Source: the Author).

13.1.1.2 Ownership Assignment by *Al-Hiba* (Donation in Perpetuity to All)

Al Hiba is a sort of a gift that means a donation in money. It is recognised in *Shari'a* as a contract of ownership of a man who donated his money or property to other people without compensation and, in general, it includes charity, presents and gifts (Al-Sayed Sabik, 1983, vol.1, p.388). Abu Horayrah narrated that Prophet Mohammed ﷺ said “*Give presents and gifts as it will increase affection among you*” (Ibn Qudama 1970, vol.5, p.647). Khalid Ibn Odai narrated as well that Prophet Mohammed ﷺ said that “*the one who receives a sort of charity from his brother without anything in return should accept it and not return as it is a present from Allah ﷻ to him*” (Al-Nawawi, 1983, vol.15, p.370).

In respect of gifts, there are many cases of gifts of houses or some parts of them. Conditions for the gifts vary a great deal. These conditions must indicate the form and means of division, including uses for such items as toilets and corridors. As these are considered *Hiba* for common use, that is to say, being shared among several individuals, they can be classified as common property for those who own them (Al-Wanshirisi, 1981: vol.9, pp.146-196, see also Ahmed, vol.1, 1935, p.52).

Therefore the gift and how it is to be used or distributed has affected the division of the environmental properties. Such division affected the property itself as a constructed unit which, in turn, had an effect on general urban fabric. The accumulation of these alterations to properties created the unique shape of external walls for every property that was connected or intersected across the roofs of other buildings. This has also resulted in a built environment in a constant state of flux, but one that was always compatible with the requirements of its owners and inhabitants.

13.1.1.3 Ownership Assignment by *Al-Omra* (Donation to a Specific Person / Family)

Al Omra is a type of grant that occurs when a person receives something for the rest of his life. This *Omra* was donated to him during his life and then to his children after his death.

Urwa narrated that Prophet Mohammed ﷺ said: *"The one who was gifted Omra it is for him and his successors to be inherited after"* (Al-Sayed Sabiqh, 1983, vol.2, p.313). Abu Horayrah ؓ also told that Prophet Mohammed ﷺ said, *"Omra is permissible"* and from Abu Salama from Jabber we read that Prophet Mohammed ﷺ said, *"Omra is for the one it is gifted or donated to"* and *"Whatever a man gifted Omra for himself and his successors it would be for the one it is given to and it cannot be returned because he gave something when inheritance took place"* (Al-Sayed Sabiqh, 1983, vol.2, p.314). Therefore *Omra* is a type of gift and it has the same effect on the environment.

13.1.1.4 Ownership Assignment by *Al-Ruqba* (Donation over the Lifetime of a Recipient)

Al Ruqba is a gift that can be formulated when a man says to another *"I give you my house as a Ruqba, which means I made it for you in your life so if you die before me it would be mine and if I die before you it will be yours and for your successors. So if he made a present of the house for him it would belong to the one remaining of them"* (Al-Sayed Sabiqh, 1983, vol.2, p.401). Jabber said that Prophet Mohammed ﷺ said *"Omra is permissible for its people and Ruqba is permissible for its people"*. For Al-Shafei and Ahmed *Ruqba* is similar to *Omra* and Abu Hanifa said that *Omra* is inherited and *Ruqba* is *Areyah* (something borrowed as a loan).

13.1.1.5 Ownership Assignment by *Al-Areyah* (Donation of Ownership of Use)

Al Areyah is a type of loan the owner gives regarding his ownership utilities (ownership of utility for someone else without compensation). It is unlike hire in that hire, as previously indicated, is the ownership of utility with compensation.

13.1.1.6 Ownership Assignment by *Al-Waqf* (Mortmain / Donation Specifically to the Needy or Poor)

Al-Waqf (mortmain) is literally a sort of detention and in *Shari'a*, this means the holding of the original property and its benefit for the sake of Allah ﷻ for the needy and poor. The Prophet Mohammed ﷺ called for this, saying “*If a man dies his works discontinue except for three things: a valid charity, a science we can make use of; or a good son*” (Al-Sayed Sabiqh, 1983, vol.2, p.378). The Hadith insights and indicates the virtue of charity and mortmain is one of the shapes of charity.

13.1.1.7 Ownership Assignment by *Al-Wasiyah* (Donation through Bequest)

Al Wasiyah means the will and it is the legal transfer of property or utility to an inheritor after the death of the owner, unlike *Al-Hiba* which is a possession established at once. In the Holy Quran we read that: “*Allah ﷻ said ‘It is prescribed, when death approaches any of you, if he leave any goods, that he make a bequest to parents and next of kin, according to reasonable usage; this is due from the God-fearing.’*” (Quran, 2, 180).

Its also mentioned in Holy Quran (5, 106) that “*O ye who believe! When death approaches any of you, (take) witnesses among yourselves when making bequests, two just men of your own (brotherhood) or others from outside*”.

So the writing of a will is a good deed for any, in his last days, who cares to be close to Allah ﷻ. It is also a good act that provides tranquillity for the community.

13.2 Assignment of Ownership by Inheritance

In *Shari'a*, inheritance is the share estimated for the heir. It is concerned with the division of what the deceased has left behind for his heirs.

The Quran also laid down the rules for apportioning property among family members: “Allah ﷻ said: ‘Thus directs you as regards your children's inheritance: to the male, a portion equal to that of two females; if there are only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. For parents, a sixth share of the inheritance goes to each if the deceased left children; if there are no children and the parents are the only heirs, the mother has a third; if the deceased left brothers or sisters the mother has a sixth. The distribution in all cases is after the payment of legacies and debts. Ye know not whether your parents or your children are nearest to you in benefit. These are settled portions ordained by Allah; and Allah is All-Knowing, All Wise” (Quran, 4, verse 11) (see figure 13.5).

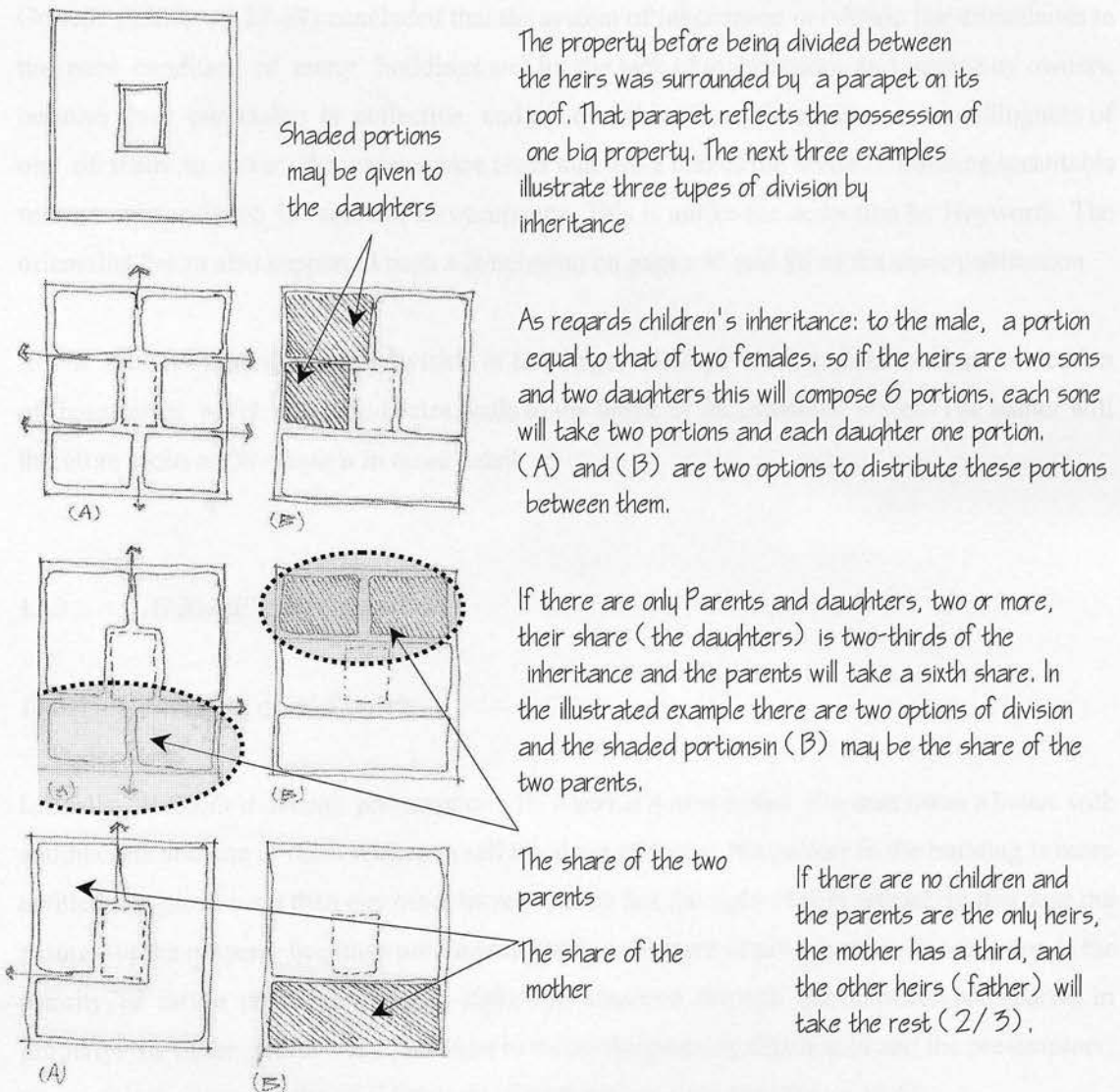


Figure 13.5

Assignment of Ownership by Inheritance will Reflect Different Territorial Divisions on the Traditional Environment (Source: the Author).

13.2.1 Effect of Inheritance in the Environment

The division of properties and places amongst heirs through inheritance law is a force responsible for many territorial changes, which took place among properties in the traditional environment. Some orientalist suggest that inheritances would inevitably lead to the division and separation of property into minor segments with little economic value (e.g. see Brugman, 1979). It has also been mentioned as the cause of the small size of properties so numerous that their original shapes can barely be distinguished after only two generations (Heyworth Dunne, 1951, p.26).

Goitein (1969, pp.88-89) concluded that the system of inheritance in Islamic law contributes to the poor condition of many buildings and for the lack of maintenance and service by owners, because their ownership is collective and not divisible. Thus, the absence or unwillingness of one of them to cover the maintenance costs that often makes the house or building unsuitable for use or residence in some of its occupancy. This is unlike the deduction by Heyworth. The orientalist Fenea also supported such a conclusion on pages 95 and 96 of the same publication.

In the case of inheritance and division of buildings, *Al-Shofa'a* would lead to a later relocation of boundaries, which might add extra walls to the fabric of the inhabited places. The author will therefore focus on *Al-Shofa'a* in more detail.

13.3 *Al Shofa'a* (Pre-emption)

13.3.1 Meaning of *Al-Shofa'a*

Literally *Al-Shofa'a* means pre-emption. In *Shari'a* it means that, if a man owns a house with another one and one of them wishes to sell his share of house, the partner in the building is more entitled to purchase it than any other buyer - i.e. he has the right of first refusal. In this case the partner in the property becomes pre-emptor and has the right of pre-emption. Pre-emption is the priority of future possession that is rightfully assumed through participation and sharing in property. In other words the connection between the property that is sold and the pre-emptors' property is the cause of the establishment of such pre-emption (see figure 13.6).

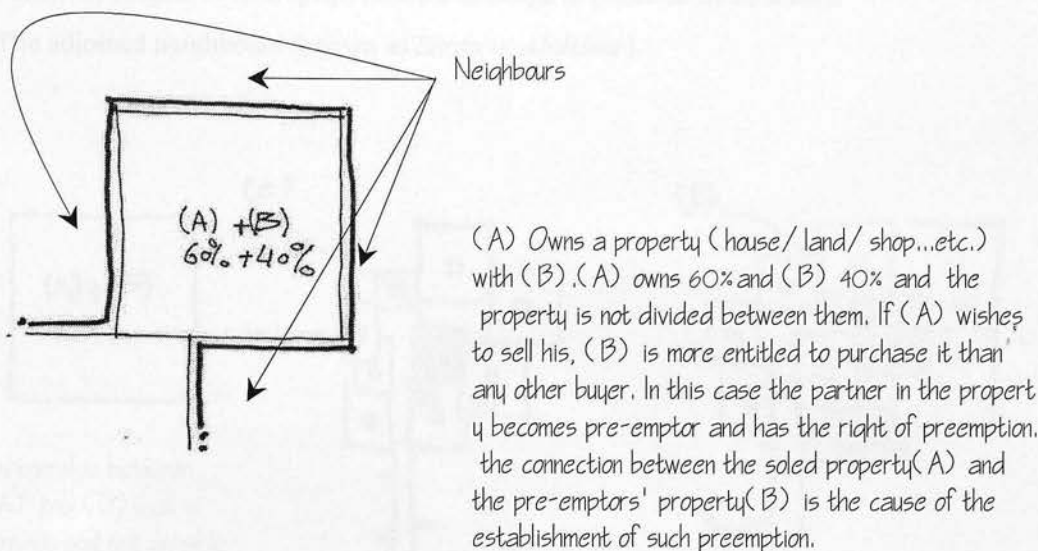


Figure 13.6 *Al-Shofa'a* as a Reason of Possession between Two Partners (Source: the Author).

13.3.2 Aspects of Connection between the Sold Property and Pre-empted Property

There are three aspects to the linkage between sold and pre-empted properties. The first is that the partnership of the ownership between two properties is in common and thus, not divisible. The second is that the connection of a partnership falls within the scope of the right of *Al-Irtifaqh* (access) as in *Al-Tareeqh Gha'er Al-Nafiz* (alley/cul-de-sac). The third aspect covers the situation where there is an adjoined connection. And it will be for the adjoined neighbour without sharing the rights of *Al-Irtifaqh* (see figure 13.7).

Each property in the traditional environment is closely associated with other properties. It offers, for example, access, *Majraa*, *Maseel* etc. Therefore transfer of ownership affects not only the owner of the property but his neighbours, as well. Due to this, the principle of *Al-Shofa'a* entitles each person affected to purchase any property before it is put up for sale on the 'open market'. This allows neighbours the opportunity to consolidate their entitlement to any benefit whose enjoyment is necessary for the use of their own property. These claims are recognised as having a hierarchy, presented here in descending order. Each person high on the list is acknowledged to have a greater claim to buy a property through pre-emption:

- Partners in possession (known as *Shofa'at Al-Sharika*);
- Partners in rights of *Al-Irtifaqh* (known as *Shofa'at Sharikat Al-Khaleet*);
- The adjoining neighbours (known as *Shofa'at Al-Jewar*).

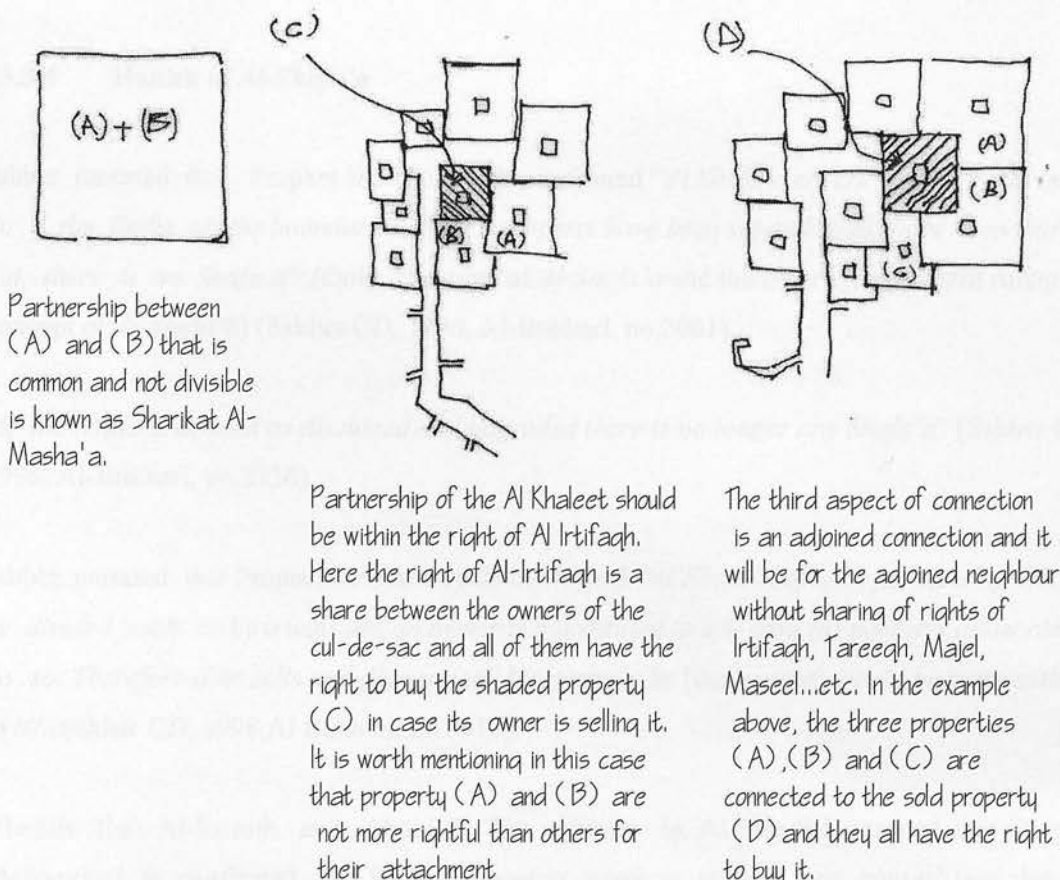


Figure 13.7 Aspects of Connection between the Sold Property and the Pre-empted Property (Source: the Author).

13.3.3 The Reason of *Al-Shofa'a*

Shari'a confirms the right of *Al-Shofa'a* and compels people to acknowledge such rights regarding the deserving parties. It is important to understand that *Al-Shofa'a* shows a great social wisdom as a means to preventing many types of harm or *Darar* that may arise should a person unfamiliar with the needs, customs, rights and histories of, say, a particular cul-de-sac suddenly buy a part of it and accidentally intrude upon the established residents' rights of access, drainage and so on. Many types of *Darar* would be prevented by applying the principal

of *Al-Shofa'a*. For instance the division of the property would result in *Darar* decreasing the area of the property and the *Darar* of rebuilding new facilities (i.e. toilets, kitchen) in each one's share after division and the *Darar* of injuring the neighbourhood and peoples' livelihood due to the sale of a part of the property to a stranger.

13.3.4 Hadith of *Al-Shofa'a*

Jabber narrated that Prophet Mohammed ﷺ confirmed "*Al Shofa'a covers what is not divided. So if the limits of the boundaries of each property have been set and roads have been marked out, there is no Shofa'a*" (Only that type of *Al-Shofa'a* and the other types are still ruling the concept of *Al-Shofa'a*) (Sakher CD, 1996, Al-Bukhari, no.2061).

"*If the house is divided as discussed and upgraded there is no longer any Shofa'a*" (Sakher CD, 1996, Al-Bukhari, no.2236).

Jabber narrated that Prophet Mohammed ﷺ confirmed "*Al Shofa'a of each partnership can not be divided such as by a wall and an owner is not entitled to sell until his partners allow him to do so. Therefore if he sells and does not tell his partner, he [the partner] would be more entitled to it*" (Sakher CD, 1996, Al-Bukhari, no.3017).

Ubadah Ibn Al-Samith and Abdullah Ibn Ahmed in Al-Musnad narrated that Prophet Mohammed ﷺ confirmed "*Al Shofa'a amongst partners in land and houses*" (see also Al-Nasa'ie, 1996, no.4626, Sakher CD). Samorah narrated the Prophet Mohammed ﷺ as saying: "*The neighbour of the house is more entitled to the house than someone else*" (Al-Sayed Sabiqh, 1983, vol.1, p.223).

Al-Shorayed Ibn Sowaed asked the Prophet Mohammed ﷺ about lands not shared by anyone. About which the Prophet replied: "*The neighbour is more entitled as he preceded*". Then he added that "*The partner is more entitled by his closeness to it*" (Al-Sayed Sabiqh, 1983, vol.1, pp.219-225).

Jabber narrated that Prophet Mohammed ﷺ said "*The neighbour is entitled to Shofa'a and the owner must await him even if he was absent and only their road is shared*" (Al-Sayed Sabiqh, 1983, vol.1, p.221).

Abu Rafie the Servant of the Prophet ﷺ said to Saad Ibn Abi Waqas: “ ‘O Saad buy my house and connect it to your house’. Then Saad said: ‘I do not need it and I am not going to buy it’. So Al-Musawar [another companion of the Prophet ﷺ] said: ‘you have to [for the hadith of Shofa’a]’. Abu Rafie said: ‘...and I heard that Prophet Mohammed ﷺ said that the neighbour is more entitle by his closeness, so Abu Rafi’ie gave the land to Saad” (Sakher CD, 1996, Al-Bukhari, no 6462).

13.3.5 Salient Points from the Hadiths on Al-Shofa’a

Al Shofa’a is entitled first to the partners sharing in the same property. *Al-Shofa’a* of the partner is relevant before division but if the borders have been marked out, that the property is divided and each partner knows his share of rooms and utilities, his entrance (s), so there would be no *Shofa’a* among them.

Al Shofa’a increases the area of any single ownership as it re-gathers what has been previously divided under the processes of other ownership principles. Therefore divided properties came to be one property. This had a great impact in changing the territorial shape of the city and shaping its development as well as on the improvement of each property’s condition according to the re-assembly of responsibility for the property on one side. This would not be so evident if each street was divided among many unconnected owners, as could happen if strangers were allowed to purchase property without the consent of the original neighbour.

There is no *Shofa’a* for what is not divisible like a small well, narrow road, small bathroom or small room. As the Hadith said “*Al Shofa’a is for what is divisible*”. *Al-Shofa’a* is also not divisible as the pre-emptor is not entitled to take only some of the property and leave the rest.

13.3.6 Al-Shofa’a of Al-Khaleet

Al-Shofa’a of *Al-Khaleet* is the pre-emption of the co-user. *Al-Khaleet* means the one who has a measure of partnership in one of the *Al-Irtifaqh* rights (like *Al-Tareeqh Gha’er Al-Nafiz* or *Al-Majraa* or *Al-Maseel*).

Al Nawawi (1983) mentioned that Prophet Mohammed ﷺ said “*there is no Shofa’a in Al-Finaa, Al-Tareeqh, or any narrow road between two houses or Rawkaa* [space at the rear of a house that is available for pedestrians] *or Rahawa* [place owned collectively between groups of houses

where the water of rain gathers and collects, while the water of *Al-Majel* is an individual ownership]" (Al-Nawawi, 1983, vol.14, pp.302, 307).

Since *Shofa'a* refers to the act of joining between two properties, then the joining of the small *Finaa* which is not divisible and also the narrow road between houses or what was a space for passers-by could be counted as *Darar* in which cases *Shofa'a* is not allowable.

13.3.7 Reasons for the Persistence of *Shofa'a*

To conclude, one can deduce that the reasons for the persistence of *Al-Shofa'a* are the partnership and the neighbourhood. The partnership is in two kinds, as partnership in the sold possession or as partnership in various rights of *Al-Irtifaqh* (Al-Kasani, 1907, vol.5, pp.3-9). This establishes (as indicated in Al-Hanafiya doctrine) that the pre-emptor is one of the following three people (in order): partner, co-user and adjoining neighbour. If *Al-Shofa'a* is in dispute, this order should be taken into account.

Prophet Mohammed ﷺ said: "*The partner is more entitled than the co-user and the co-user is more entitled than any other*" (Al-Sayed Sabiqh, 1983, vol.1, p.223). To explain the reasons of *Shofa'a* merit and make it clearer the author proposes the following example:

Two men own a house on a cul-de-sac. One of them sells his share so the right of pre-emption is for his partner since he shares in the house itself. The co-users of the other people of the cul-de-sac only share the rights of *Al-Irtifaqh*. The partner in the house itself is therefore more entitled to pre-emption.

If the partner does not want to exercise his entitlement to pre-emption, the pre-emption falls to the co-users of the cul-de-sac (the owners of all properties which have gates and doors on that cul-de-sac) as the adjoined and non-adjoined properties become equal since they are equal users of the cul-de-sac. If these people turn down their rights, pre-emption is then for the adjoining neighbour (see figure 13.8).

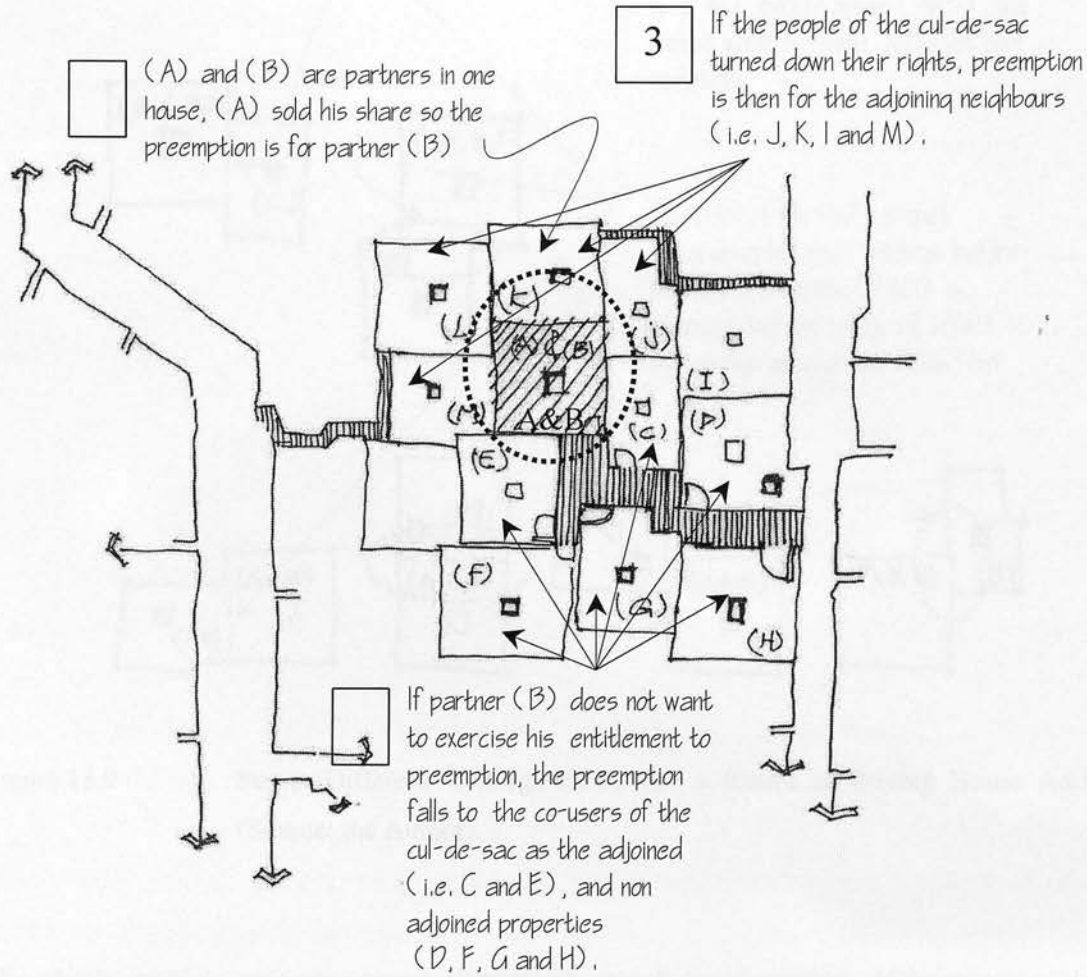


Figure 13.8 A Hypothetical Configuration for the Different Situations of *Shofa'a*
(Source: the Author).

The impact of this typical case reflects on the territorial changes between dwellings as well as the changes on the entire housing block and then finally on the urban fabric as a whole. From the above indicated point (and with reference to the following figure), assume that property (A&B) is going to be sold. If the partner bought this house in which he already lives, the action passes without any territorial change in the separating walls between this house and the other houses adjoining it. However, if any of the adjoining properties (C, E, J, K, L or M), bought house (A&B), the result would be some different configurations as in figure 13.9.

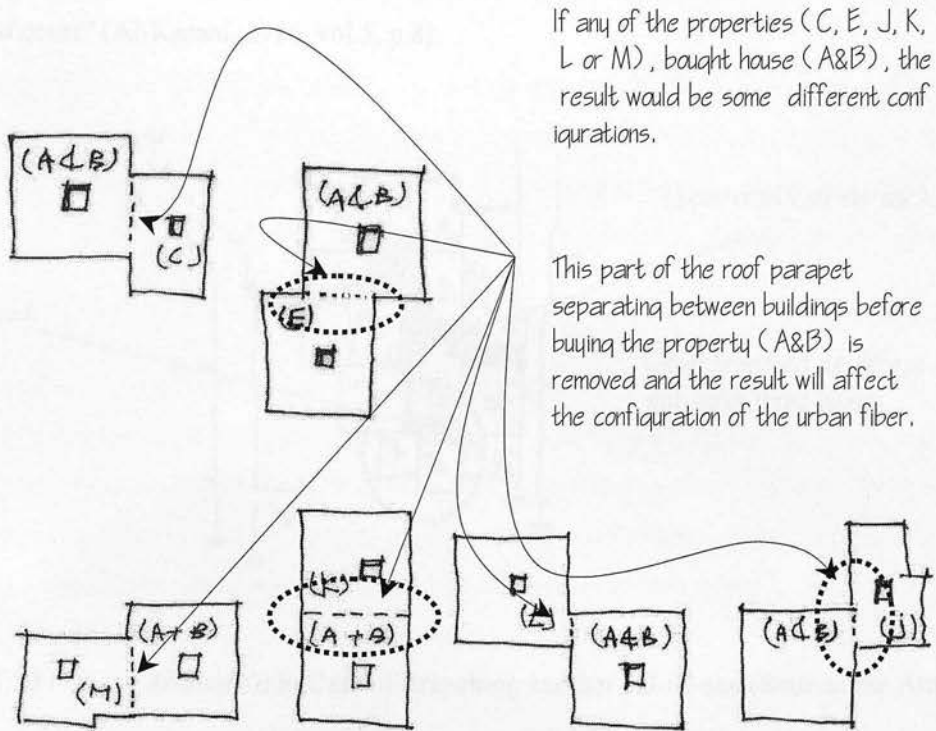


Figure 13.9 Some Different Configurations as a Result of Buying House A&B
(Source: the Author).

The above example presents several alternatives, which could emerge. If the owners of the adjacent houses (E and C) bought house (A&B), they could remove the wall between their respective properties and the newly bought one. This would change the territorial limits (as in figure 13.9). If houses (G) or (F) bought house (A&B) they could connect the two properties, as is often done in traditional environment, by building a *Sabaat* over the cul-de-sac, thus adding a feature new to this part of *Al-Amer* (see figure 13.8). In either case, pre-emption according to its principles can be seen to be a major reason for integrating properties and increasing their volume. This indicates a reversal effect for some principle of *Shari'a* which could have divided the properties originally such as gift, present, *Omra*, Charity and others. Furthermore, *Al-Shofa'a* is a major force in reformulating the traditional environment, which always reflects the borders of ownership.

If another cul-de-sac branched from this cul-de-sac, the pre-emption of any house could pass to any who live on the nearest cul-de-sac as they are more entitled than others (see figure 13.10). If a certain house is sold in the upper road, its pre-emption would be for both the upper and lower road people because their rights on the upper road are equal, so they become equal in merit.

"People of a road are entitled to the pre-emption of the road if it was their ownership or it was not owned court" (Al-Kasani, 1986, vol.5, p.8).

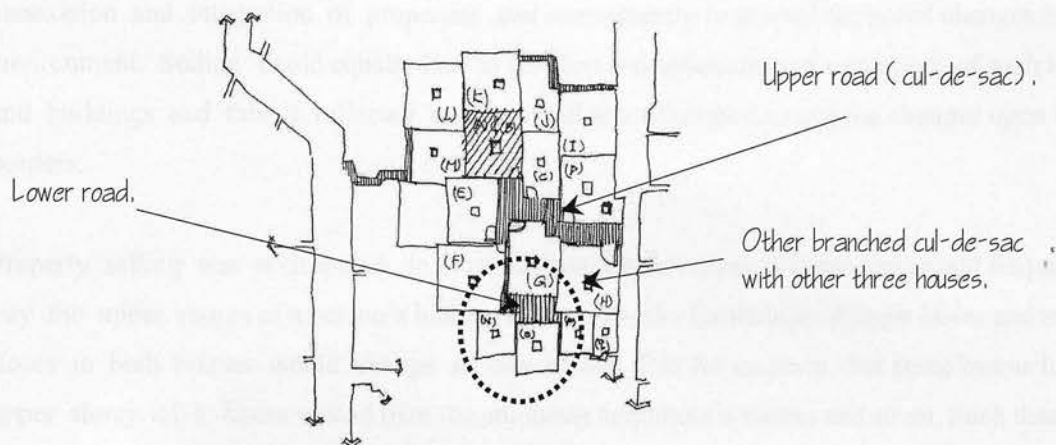


Figure 13.10 *Al-Shofa'a* in Case of Branching another cul-de-sac (Source: the Author).

Even if pre-emptors become numerous whether they are partners, co-users or adjoining neighbours the pre-empted property is divided amongst them on an equal basis.

These cases provide some answers to the question indicated at the beginning of this chapter, which considered the reasons for the haphazard external borders of houses and buildings in the traditional environment coexisting with the internal courtyards of well defined squares or rectangle shapes.

In addition, this is a probable account of what could have happened in the traditional environment following the implications of the pre-emption principle. As indicated there are many incidents, as well as the opinions of the jurists, regarding methods of dividing the pre-empted. If it is determined on the proportion of partnership or on the partners' numbers in any property for sale, this would lead at the end to the same image of the territorial changes of the city (for more details see Al-Nawawi, 1983, vol.5, pp.363, 364, vol.14, p, 326).

There are also other aspects of *Al-Shofa'a* that apply to gardens, roads and upper and lower floors between the neighbours. It is not necessary to dwell upon all such instances but only to know the impact of various aspects of *Al-Shofa'a* on the traditional environment (for more examples see Al-Nawawi, 1983, vol.14, pp.299-309, see also Ibn Qudama, 1970, vol.5, pp.312, 363-364).

13.4 Transactions (Selling and Buying)

The selling and buying of lands and properties in the traditional environment also led to annexation and integration of properties and consequently to several territorial changes in the environment. Selling could equally lead to division and subtraction of some parts of such lands and buildings and this is reflected in the small size of properties and the changes upon their borders.

Property selling was widespread in the traditional environment. Neighbours would frequently buy the upper rooms of a person's house. Accordingly the limitations of these lower and upper floors in both houses would change so one would find for instance, that some rooms in the upper storey of a house extend over the adjoining neighbour's rooms and so on. Such that one finds houses with rooms on the upper floor belonging to nearby houses and so on.

With the continuity and repetition of buying and selling operations, the locations of separating common walls between buildings changed in the traditional environment. This can be seen throughout every traditional Islamic City and it is difficult to find walls of several houses following a straight line. This is because each house has different borders, which have been formed for different reasons to meet the demands and wishes of the inhabitants. It also demonstrates the ability of the environment to respond flexibly to fulfil the wishes and needs of the inhabitants through the ages, taking full advantage of any lack of external interference or imposed laws which are intended to compel the inhabitants to reconfigure and 'tidy up' the shapes of their properties. Those inhabitants were thus free from today's obsession with the accuracy and regulation of environment. They were at liberty to shape their community to meet their own needs and thus, to create a responsive environment.

13.4.1 Concepts and Comments

- From the above discussion one can note the ability of the traditional environment to fulfil the desires of its inhabitants in a flexible manner. The concerns of inhabitants were often met at the expense of the very things that seem to matter most to a centralised planning problem, such as straight streets, modular blocks and straight, regularised property lines.
- The independence of the inhabitants is reflected in the traditional environment in its ownership lines, means of division and changes in the number of owners for each property. These changes created a fabric rich in variety and diversity.

- Because the traditional environments lacked the characteristics of straightness and verticality, they have appeared to many researchers to be highly irregular. However, from the inhabitant's view, it was very ordered and regulated since it was understood and built by them.

13.4.2 The Problem of Too Many Co-owners

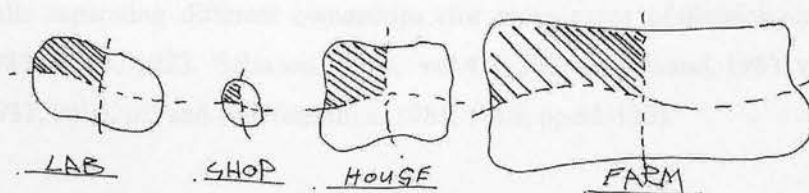
The problem of too many co-owners and their different circumstances that led to the ongoing division of properties effected the environment to a great extent. Ownership in the traditional environment enabled many owners to share in one property, but yet through the principles of *Hiba*, *Sadaqah*, *Omra* and inheritance in addition to pre-emption and transaction. In cases in which a large number of people owned one property but yet had disagreements, they would seek its division because each one of them had interests which were different from those of others.

All principles of *Shari'a* and jurists' opinions recommend the division of a property should a dispute arise amongst its owners. This has created an environment that contains a multiplication of territories as the result of division operations. This is unlike the present environment in which any change in the external borders of ownerships usually requires buildings to be eliminated as a whole and later restored, so they could generate greater revenues for their inhabitants.

This urban fabric of the traditional environment also accepts the assignment of ownerships throughout time and the changing of circumstances surrounding the properties to be something inevitable. Roads and parts of building may change from a residential use to a commercial one, requiring some sort of territorial change. A flexible environment allows for the development of various circumstances which cannot be easily resolved by actions of centralised planning or architectural agencies. Also the traditional city responded to such changes with the least amount of demolition and construction work.

13.4.3 Types of Division

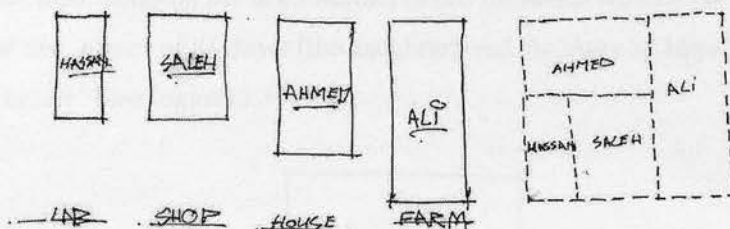
Shari'a recognises two types of division: division that separates and division that collects and reassembles. Division of separation means that, if four people share the ownership of a certain house, farm, shop or laboratory, the share of each will be the quarter of property. If whatever their own increases or decreases, it does so across all four partial possessions (see figure 13.11).



Division of separation in this example shows that if four people share the ownership of a laboratory, a shop, a house and a farm, each partner has $\frac{1}{4}$ of the possession of each one.

Figure 13.11 The Division of Separation (Source: the Author).

In the other type of division, of integration and gathering, each share of every individual in every property should be known and all of that will be collected and gathered into one unit. Thus the shares of the four people share in a farm, house, shop and laboratories are integrated and collected into each property such that one will own the farm, another the house, the third the shop and the fourth will own the laboratory. Any inequality in the shares will be compensated by cash (see figure 13.12).



The other type of division is the division of collection and gathering. In this example Ali, Ahmed, Saleh and Hassan are partners in four possessions: the laboratory, the shop, the house and the farm. These four possessions are collected into one unity and the inequality in the shares will be compensated by cash.

Figure 13.12 The Division of Collection and Gathering (Source: the Author).

It is very important to mention that jurists differ as regards the division of pre-emption. If a property is divided among several people, does this grant one a share of pre-emption as per their share of ownership?

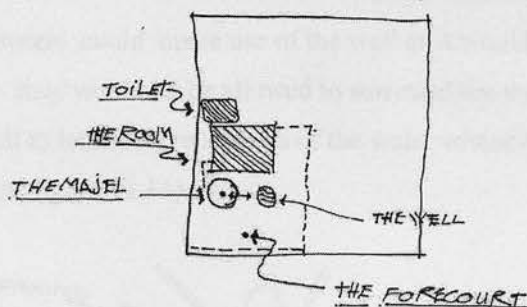
Jurists posit two views regarding this matter. Some say that the division should be in accordance with the number of partners on equal basis which would lead to equal properties. This is evident in territorial sub-division. The second opinion states that, if the division is carried out in accordance with the share and plots of each, the divided areas will change. This will be evident

in the walls separating different ownerships (for more cases of division on pre-emption see Malik, 1981, vol.5, p223, Sahnoun, 1978, vol.4, p.207, Al-Nawawi, 1983, vol.14, p.236, Al-Kasani, 1987, vol.5, p.5 and Al-Wanshirisi, 1981, vol.8, pp.83-115).

Operations of division bring about territorial changes as a result of the division of each possession into several ownerships (as indicated above). But, for the division or integration, the common wall separating all owners remain without any increase. Accordingly, types of different division systems in *Shari'a* lead to specific characteristics brought about by the territorial changes incurred through the ages.

13.4.4 Division and *Al-Darar*

Al-Wanshirisi (1981, vol.9, p.179) mentioned that: "*Al-Maziri was asked about a father who gifted a Bayet [a room in the ground floor] for his daughter with a recognised and certain forecourt in front of it and that assured a Majel, a well and a toilet, The charity was verified and the father died. Later on the heirs wanted to sell the house without the indicated room. He answered that the owner of Al-Bayet [the daughter] and the share of Majel, well and toilet will not be forced to sell*" (see figure 13.13).



The *Darar* of division which would happen to the owner of the Al-Bayet (the daughter) after the heirs sell the house was prevented and she will not be forced to sell.

Figure 13.13 Division and the *Darar*, The Case of a Small Property Within a Bigger Property (Source: the Author).

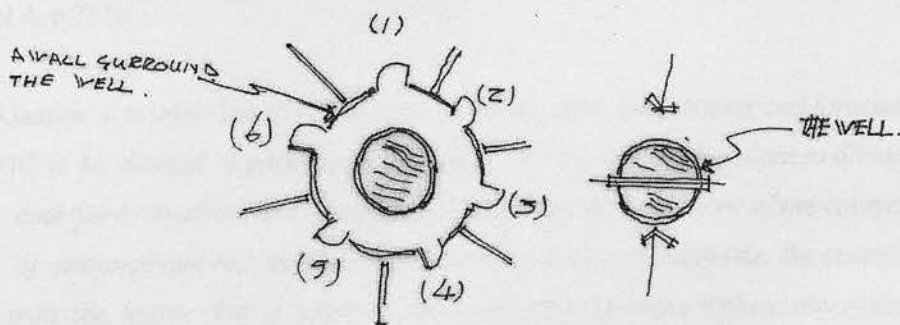
From this event we may note that the property of the daughter, that is, the room plus the forecourt, a part of the *Majel*, well and toilet were all inside a larger property owned by another party. The judgement did not take into account the question of the building, location and size as well as other factors concerning *Darar* which would affect the major house owners as a result of

this small property inside their own larger properties that prevented them from selling. Thus, the principle of division in *Shari'a* does not change with regard to the size of the property. In the *Shari'a* view the individual's right was always respected even if the other party was larger.

13.4.5 Divisible and Indivisible Properties

Properties and land can be categorised into divisible and indivisible entities. The divisible type was previously discussed as well as its effect on the environment. The indivisible type includes the mill and properties in which any division would incur great damage, as in the division of a narrow toilet, Majraa, Maseel or small rooms. Concerning these, jurists had two opinions: 1) that it cannot be divided and should be common among partners although this could lead to neglect, and 2) that of enforcing the partner to sell what is indivisible in its entirety (Al-Qurafi, n.d, vol.4, p.26, see also Al-Kasani, 1986, vol.7pp.19-20, Ibn Qudama, 1970, vol.4, pp.573-576).

In general scholars and jurists were keen to avoid *Darar* which may result by division, or enforcing the partners to sell what is indivisible. By virtue of *Al-Tahayul* on *Al-Darar* (adopting a ruse to own the harm), owners could benefit from what they own. As an example of that principle people could use the *Darar* of division of well by building a wall in the middle, so that two adjoining landowners could make use of the well as it would be next to his house. If there were many partners they would all be allowed to surround the well with a wall and each could open a door in the wall to let his share and use of the water whenever he wanted (Al-Wanshirisi, 1981, vol.8, p.121) (see figure 13.14).



In case of two partners the division of the well is by a wall built in the middle of the well, but in case of many partners they surround the well by a wall and each one of them opens a door from his side (i.e. share) to use it whenever he needs to.

Figure 13.14 *Al Tahayul* on the *Darar* of the Division of the Well (Source: the Author).

13.4.6 Division of *Al-Saha* (Front Yards for a Group of Houses) and the Rights of *Al-Irtifaqh*

The division of properties brought forth many complications and possibly cause strife amongst owners which was not present before. For these reasons, jurists were keen to find sound environmental relations that would maintain rights of all without causing any *Darar* or damage. Thus, there was a focus in solving all incidents of division in properties so as to solve the problems of *Al-Irtifaqh* regarding a certain team by the division of the share of another team. There were many incidents to indicate the rules of division of *Al-Saha* between houses which share the same court and division of the bathroom, road, wall and the water flow, as well as rules of the well and how to ruse on its *Darar*. The jurists allowed division of the internal bathroom if differences arose between partners (*Darar* here is inside the house).

Other types of *Darar* are common among all partners and belong to a public utility such as water flow (as per the legal opinion of jurists) and this is indivisible, with the exception of the road which may be divisible depending on whether it causes any harm to a partner that his utility is reduced.

Sahnoon ask the jurist Ibn Al-Qassim: "*Can the water flow be divided as per Malik's saying? He said 'I did not hear Malik indicating the division of the water flow' "*" (Sahnoon, 1978, vol.4, p.254). As for the division of the forecourt, there are many cases. In one of them Ibn Al-Qassim was asked about: "*People who share a land between them and there is no road available for each in respect of his partners land and if the division is carried out accordingly some of them would not have a road to his land. Ibn Al-Qassim replied that this is not permissible*" (Sahnoon, 1978, vol.4, p.251).

Ibn Al-Qassim was also asked: "*Consider a house with some rooms and forecourt between them. Will it be divided if partners ask for that?'*" He replied: "*If they want to divide the house and the courtyard together that each one of them has his own share of the courtyard for the purpose of entrance and exit and the tethering for his beast and such like, the courtyard will be divided with the house. But if some of them will get their share without any of the forecourt utility instead of entrance and exit only, only the house may be divided and the courtyard will be left for common utility and the least share of utility of the courtyard will belong to the maximum share whether he lives with them or not' "*" (Ibn Al-Rami, 1982, pp.417, 418).

Shanoon was asked Ibn Al-Qassim: "*What if there was a courtyard and it was divided between the partners and one of them had little share providing only the amount of entrance and exit and*

the others got a share from the courtyard to utilise half (to stall a beast for example) and they wanted the division. Ibn Al-Qassim replied: 'The courtyard would not be divided because the man with little share - if they divide so - would not enjoy more than the entrance and the exit but they enjoy more than that while Al-Irtifaqh of courtyard belongs to all of them whether they have a minor or major part of it' " (Sahnoon, 1978:4:251-272).

The aforementioned incidents indicate the rules of dividing the courtyard between partners following the rule of no *Darar* and no *Dirar*'. Therefore one of the partners would take advantage in some way (as he does not find a place to stall his beast since his share of courtyard will be used for entrance, exit and storing other beasts) The courtyard can thus be considered as a property which does not accept division (even it is physically divisible). It remains common amongst all adjacent property owners.

The division that turned the big house into smaller parts establishes equality between all of them and the right of easement for the common courtyard regardless of the small size of the area of one share of the house. So the little or bigger shares in this concern are equal for enjoyment of the courtyard and this gives the courtyard the same rules as applied to the cul-de-sac and as may concern any action adapted and carried out on the road itself.

Ibn Al-Qassim said: *"If some of the partners want to put fire wood in front of the door of his partner's foyer, they would not be entitled to do so even the house had a room for it"* (Ibn Al-Rami, 1978, p.418) and *"If some partners want to built in the courtyard next to his house to get use of it, they are not entitled to that and the other partners have to prevent him"* (Sahnoon, 1978, vol.4, pp.272, 273).

13.4.7 The Road and Division

This thesis has previously looked at such issues of the traditional environment as rights of *Al-Irtifaqh* in respect of roads and corridors between houses that form a sort of restriction for each. The owner and the user of the road is not entitled to make any change causing *Darar* to others without first seeking their consent and approval. As an example of this the following cases are presented:

"A house shared by two people included a road for another house owner and the owners of a shared house wanted to divide the road between them. The owner of the right of Al-Irtifaqh [who owns the other house] is not entitled to prevent them so long as they leave his road as it

was. For selling such a shared house with road, an agreement must be reached that would be acceptable to all three of them. If such road is common between them, its price would be divided on an equal basis. If the road belonged to the house owner and the other had the right of Al-Moroor, each of them would have his own right. Thus the courtyard would be established with right Al-Moroor away from it. Thus, the separation between the two phases would be needed by the right of Al-Moroor with the remaining part for the house owner. In addition, the right of Al-Maseel is similar to the road itself. It means that if one has the right of Al-Maseel in his house and it is common, so, upon dividing the house between both of them, the right of Al-Maseel would be left as it was" (Al-Majala, subject no.1168).

If there is a house for someone else in the courtyard of the previous shared house and the house owner goes through it and the courtyard house owners want to divide the house and the courtyard between both of them, then the one who owns the house in the courtyard is not entitled to prevent them. But the owners of the shared house would have to leave a road the width of the house door when dividing such property (Al-Majala, subject no. 1169).

On the authority of Sahnoon (1978, vol.4, p.275) and Ibn Al-Rami (1982, pp.324-427), Ibn Habeeb said "*If there were two houses next to each other, the first [the external one] was on the border of the road and the other was internal. The people of the internal house divided their house into two parts and people of each share wanted to open a gate from their share to the road. People of the external house have the right to prevent them if the road wall is owned by them, but if the wall belongs to the people of the internal house then they have the right to open the door*".

13.5 Conclusion

- Throughout the aforementioned examples one learns that the wall on both sides of the road is either owned by the internal or external house representing one of the territorial changes that took place in the traditional environment.
- Principles of ownership through assignment by means of gifting, charity, retention or by means of inheritance lead to the division of properties and lands in the environment and that in turn, leads to separating lines and borders between properties in a new location.
- Principles of Al-Shofa'a and transactions led to the gathering of properties under new collected ownerships that resulted in constantly changing borders, which means literally the

walls that mark the limits of ownership. This was repeated through time and resulted in continual territorial conversions and new separating lines between territories. That was the major reason behind the 'randomness' perceived in such separating lines between different properties in the traditional cities. So it is rare to see orderly rows of houses on one street as seen today in our planned cities.

- Lines of ownership confirmed the freedom of the population to formulate the traditional environments without rules applied by a central body, these developed their zigzags through time in the course of meeting the needs of the inhabitants (which one could argue was the duty, by definition, of the built environment), such as the need for one inhabitant to enlarge what he owned to accommodate an increase of his family or to sell part of his house in the event his children had moved away.
- The traditional environment is evidence of *Al-Leena* (flexibility) in the urban fabric of roads, territories, properties, lands and forecourts. It was this flexibility that allowed people to respond to their own needs and personal interests.
- Inhabitants of the traditional environment were concerned in first place of doing what fulfilled their needs and desires regardless of the orderliness of their borders or the regularities of the common walls. Thus, the environment they created was thoroughly regulated, as well as stable because they knew rules that generated it. Their response led to the conventions which formulated their message of life and a complete system of thinking to deal with their environmental problems. These were established over time as customs and they incorporated ancient knowledge of the environment. Thus, the people were aware of every little detail in their environment, knowing their own rights as well as the extents of others. In other words, they were environmentally educated.
- This the author provides as testimony that *Al-Amer* was not a random, thoughtless creation, rather a system developed from *Shari'a* that led to the formation of constructional systems with a certain flexibility, and allowed the inhabitants to formulate the roads of the city, its spaces, forecourts and boundaries over many generations. What can be seen of the ruination of the traditional environments in our present cities, of demolished buildings and dirty streets, occurred because of the abandonment of the laws of *Shari'a*, laws which were the source or roots of the traditional environment. In fact what we see now is an environment that does not represent the original inhabitants, but a population who left the countryside and settled in the cities in great numbers. This puts great pressure on the infra structure that has resulted in the phenomena of urban sprawl, misery and poverty (see figure 14.1 to 14.3).

CHAPTER FOURTEEN

Conclusions of the Research

This research attempts to sew a new piece of knowledge into the general fabric of Islamic studies, one that has eluded or been overlooked in scholarly investigations of urban development. Simply put, it addresses the persistent question of how the Islamic City was initially formed and how it came to take the unique configuration that it now does. In examining the study the reader should bear in mind that the general Islamic City targeted in this research was not the sprawling metropolitan complex that emerged over centuries in North Africa, Asia, or the Near East, but the *Old City* (now perhaps the inner-city) that formed the nucleus of these places. Why is such an historic investigation worthy of the time and effort since new construction technologies, building types and modern commercial activities have come to obscure the workings of the medieval Islamic societies where these cities first formed. A brief visit to any of these urban metropolises would quickly answer this question (see figure 14.1, 14.2).

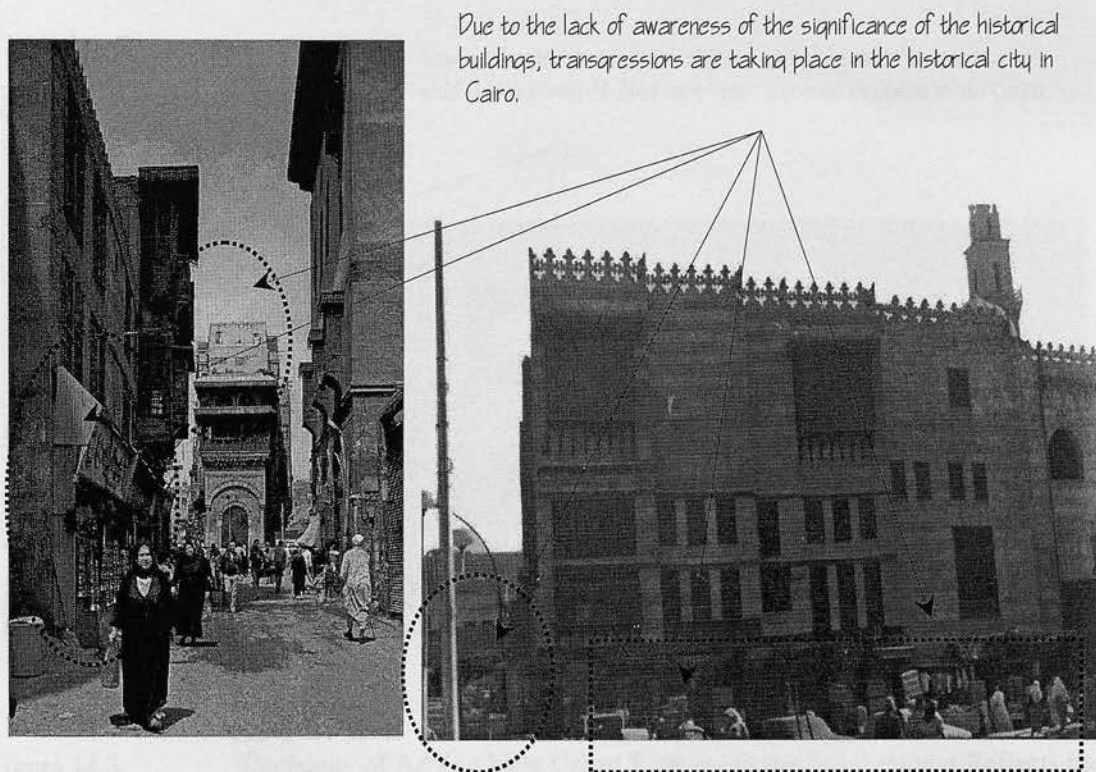


Figure 14.1

Deterioration of the Historical Area in Cairo (Source: Abdul Baqi I., 1991, pp.273, Aga Khan, 1988, p.21).

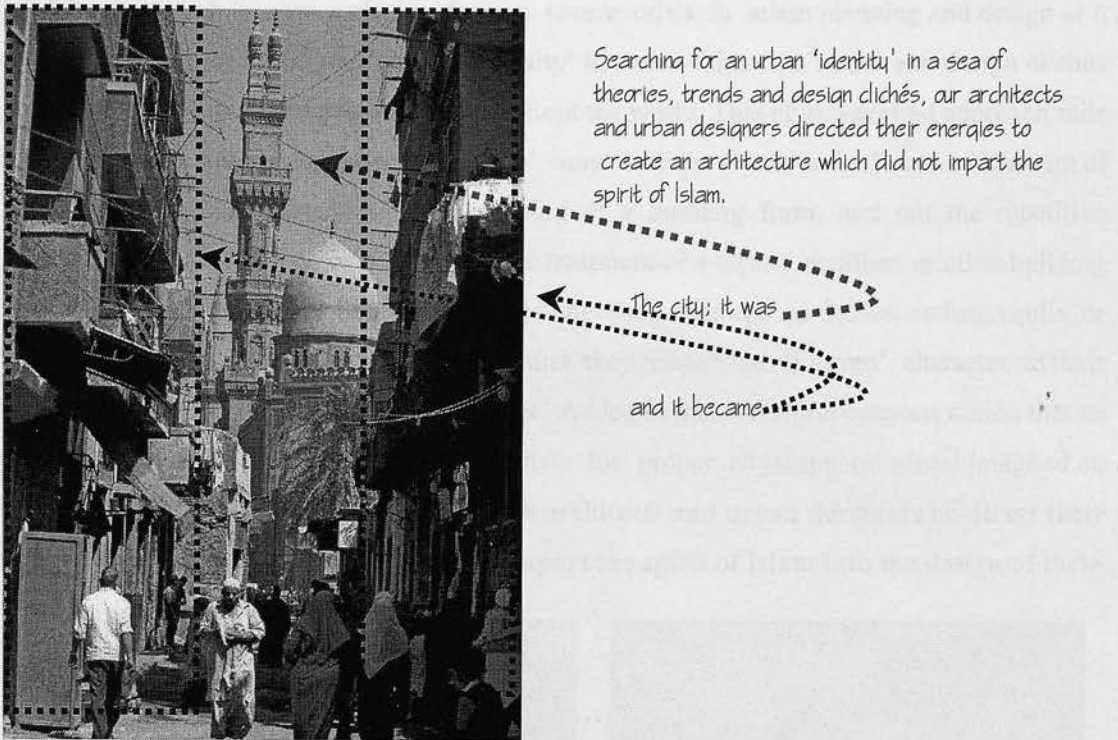


Figure 14.2 The Rehabilitation of Historic Cairo, a Development Plan for a Historic District in Cairo (Source: Aga Khan, 1988, p. 135).

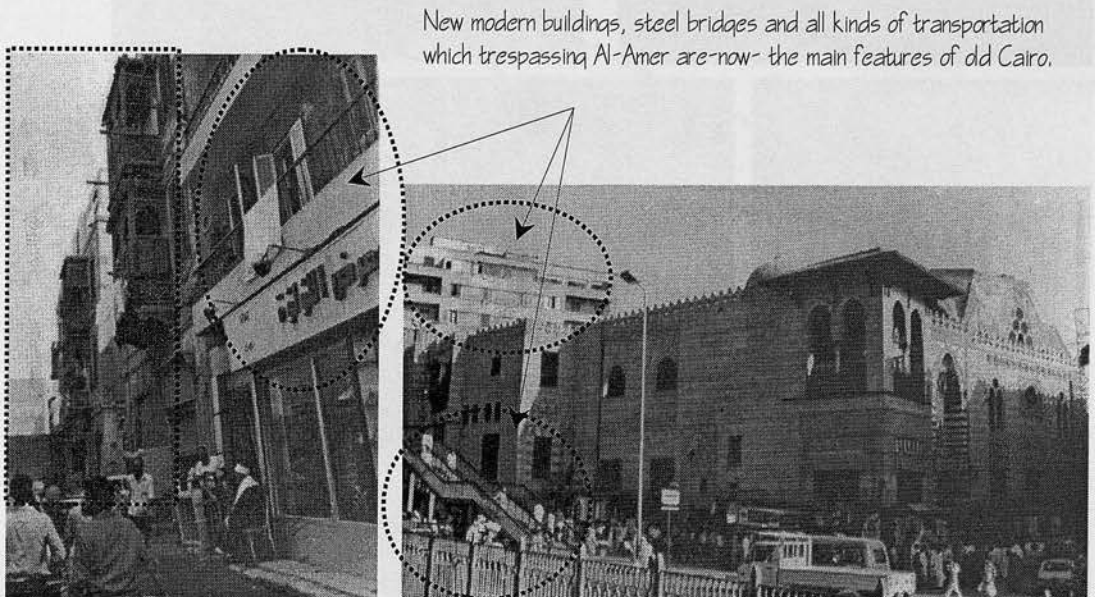


Figure 14.3 Decisions of Adding New Urban Features to the Environment Reflects the Non Respect of *Al-Amer* of the Old City in Cairo (Abdul Baqi I., 1991, pp. 274, 606).

The Islamic world is now suffering from a severe crisis in urban planning and design as it searches for its own urban architectural ‘identity’ in a sea of theories, trends and design clichés manifested in buildings and neighbours throughout the world. This object-centred approach fails to realise that a genuine architectural ‘style’ must emerge from and reflect a refinement of design concepts and principles in the shaping of a building form, and not the repetitive application of ornament or in the decorative treatment of a façade, roofline, or other building element. Today’s architects frequently orchestrate such features as domes, arches, vaults, or even *Mashrabiya* in their designs thinking that they impart an ‘Eastern’ character to their buildings, which, in turn, makes them Islamic! Added to this is the preposterous notion that an aggregation of such structures should constitute the proper cityscape or visual image of an Islamic community (see figure 14.4). **How can architects and urban designers re-direct their energies in such a way as to re-create or impart the spirit of Islam into the design of their cities?**

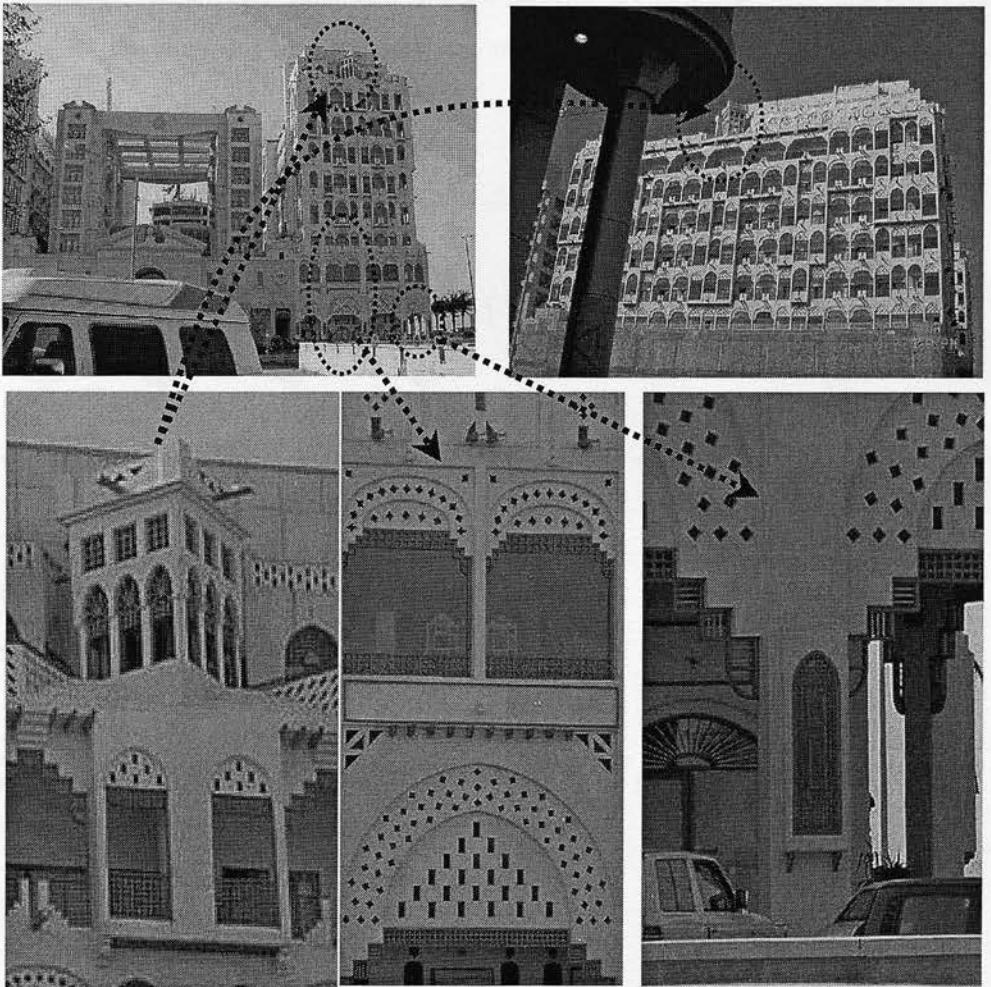


Figure 14.4

Today’s Architects Frequently Orchestrate Some Repetitive Ornaments or Decorative Treatment of the Façade, Roofline and Arches Thinking that These Make Their Buildings Islamic (Source: the Author).

To answer this question, the architect / designer needs a sound understanding of the present situation, as well as a solid grasp of the previous work accomplished in this field. In reviewing the literature one notices that past investigators' attitudes usually fall into four general categories or research themes. These are: 1) the data is irrelevant; 2) the data is to be ignored; 3) sufficient research has already been accomplished; or 4) the information can be acquired from existing models, concepts and studies presently available. One could even add a fifth possibility and that would be that the previous research could be re-packaged and re-presented in some new format. The first two schools of thought consider the Islamic City as a truncated urban environment wholly overshadowed by 'Western' design influence. The third is somewhat in opposition to the first two, exhorting architects and town planners to return to the past wholesale, disregard advances in materials and technology and follow medieval design precepts to the letter. Were this to be done, the **New Islamic City** would re-emerge. On the contrary Keeping contemporary Muslim architecture within the strictures of centuries-old styles and architectural prototypes only impedes its development and severely limits its potential for improving Islamic Society (see figure 14.5).

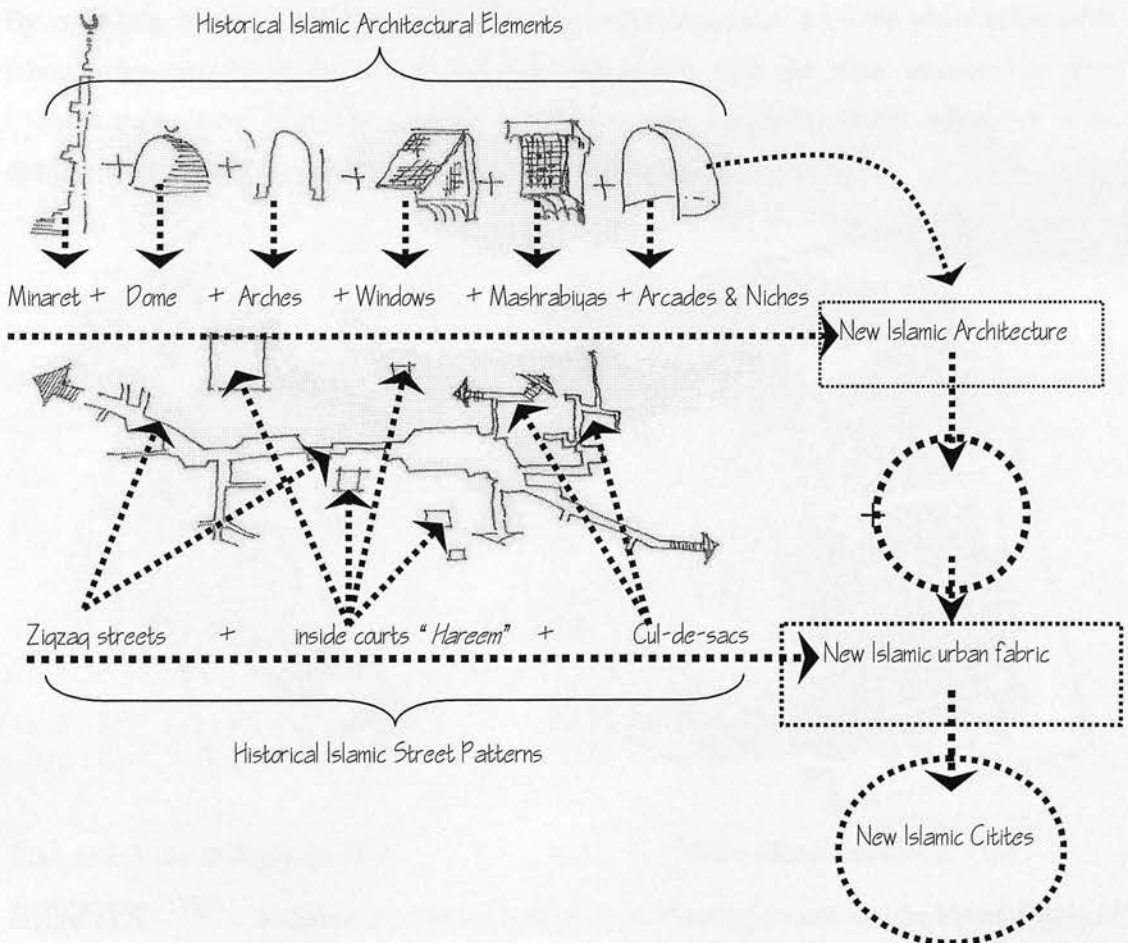


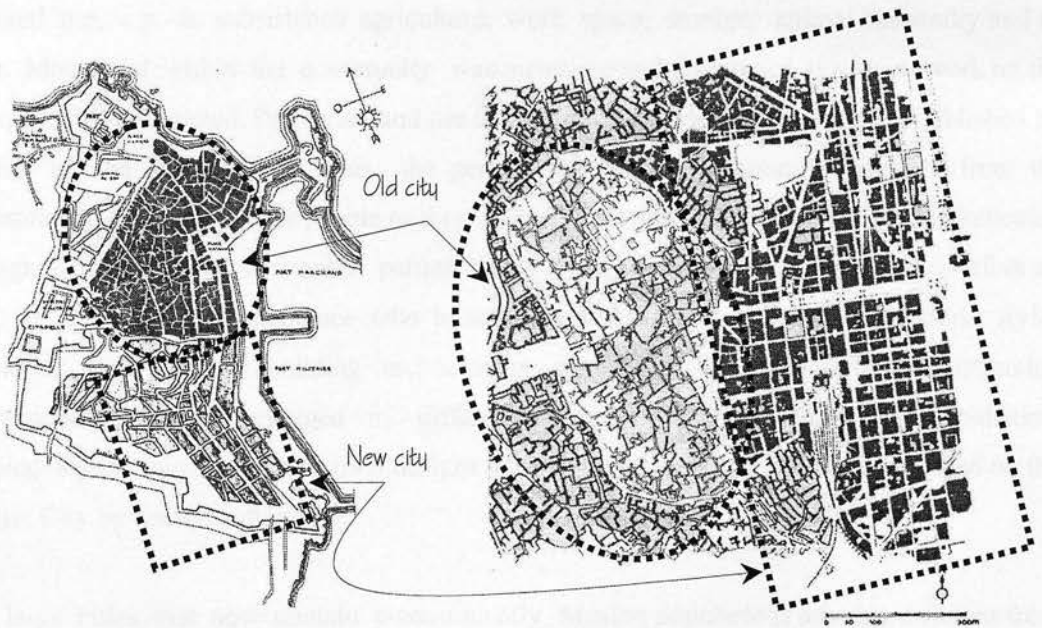
Figure 14.5

Derivation of False New Islamic Cities from Pastiche Approaches
(Source: the Author).

A view of contemporary urban planning in Middle Eastern cities indicates especially that the schemes for new towns, as well as master plans for existing cities, are often centrally controlled, but closely related to Western models. Were one to examine new development in the Gulf States in particular, the following points regarding planning would quickly become manifest:

1. The government or state owns all of the land and consequently makes all of the decisions regarding development.
2. Planning is usually done by special ministries to effect change required for specific national development purposes, e.g. increased oil production, added land for residential expansion, improved linkage between critical land use activities and so forth.
3. Land subdivision occurs mainly to facilitate new development, control densities, or to regulate settlement patterns.
4. Land markets are often manipulated to insure that particular agents or actors gain control of selected sites.

By operating in this fashion, new accretions of developed land are often added to the urban fabric independently of the will of the local inhabitants who are often impacted by them. Unfortunately, new plans and building schemes are frequently well advanced in the development stage before land planning is ever initiated (see figure 14.6).



Plan de la Ville D'Alger en 1948.

Tunis centre: Madina et Ville

Figure 14.6
Europeenne, 1983.

Because of the Centralisation of Planning Decisions, the Urban Fabric of the New Cities Throughout the Islamic World is Absolutely oppose the Fabric of the Traditional Ones (Source: Denis Grandet, 1988, pp. 85, 90).

In studying traditional Islamic society this research has revealed that the historic process of urban development proceeded quite differently. There was no central decision making regarding city building. The *Imam*, or governor, was only allowed to determine the location of the Mosque and oversee its construction. It was also within his purview to initiate construction of fortifications for the defence of the city, to build *Darul Imara* (the *Emirate* house used as a place or centre for local government) and to insure that critical infrastructure was built to insure the general welfare of the people. Since neither the *Imam* nor the government owned the land, it was not within their power to prevent anyone from vitalising any waste or dead land (known as *Mawaat*) and, in turn possess it by those means. In general, the use of land was controlled by the people who cultivated it or used it in some particular way to maintain their livelihood.

Every Muslim thus had the opportunity to develop a piece of land for his own needs as long as he did not harm it or use it in some fashion that was injurious to the welfare of others around him. Being waste, dead or the property of no one, these lands were neither purchased nor sold. The size of particular developed plots was determined by the relative needs of the person who used them. Individual small plots of land developed initially around the Mosque, as that was the centre of the community.

In the Islamic City land became vitalised or brought into production as it was needed for modest personal use, e.g. as subsistence agriculture, work space, storage, animal husbandry and so forth. Most land within the community was measured and distributed as soon as work on the Mosque was completed. Particular land use configurations were worked out and established by leaders of the community. Thus, the general will of the community emerged from the accumulated decisions of the people as they accrued over time. Land disputes were adjudicated through negotiations of concerned parties and popularly elected community élites. All in all then, it was the local populace who brought forth the Islamic City. Architectural styles developed from known building technologies applied to local materials. Construction innovations eventually emerged in different geographic localities, bringing forth-distinct regional styles. Neither architectural designs nor planning constructs were ever imposed on the Islamic City by central authorities.

The large cities that now contain predominantly Muslim populations are very different from those of their predecessors. The dynamism of individual energies working in consort to develop urban communities has been usurped and replaced by centralised planning efforts administered by appointed élites. Unfortunately, these authorities are often swayed by the efforts of Western

designer groups in selecting plans for major buildings or new urban complexes. Most choices are based on populist images of 'high tech' societies or Western affluence.

In examining the image and operation of the city today, it is fairly evident that most of the apparent incongruity between buildings, spaces and circulatory systems can be attributed to societal problems rather than the deficiencies of architects, engineers, or planners. In cities today problems of urban society frequently result from poor public decisions or the defective processes by which they are made.

14.1 Some Remarks About the Research Framework

It is well accepted that there are many factors that shape our urban environment. Among them are the physical elements of nature, the particular characteristics of the site, the political leanings of local government and the requirements of the local population itself. This study has focused upon the effect of one such social vector, the role of Islamic doctrine, and noted its historic role in urban design. While many scholars have touched upon some of these points individually none has collected them in any systematic fashion to demonstrate their aggregate effects in the formation of Islamic Cities. Thus the framework, and indeed the research within this study, has shed great light upon the '**hidden forces**' in the design process, which have been overlooked in previous investigations of Islamic communities.

There are many important conclusions to be drawn from this research. Since they are quite numerous, they have been largely organised around the data presented and analysed in the various chapters. Central to all of them is the concept of **land ownership** (land resources and improvements) and the ways it was achieved within Islamic society. Thus, it was the role of Islam that became the very cornerstone upon which the city developed in an organised and productive way. **The prophetic Hadith "The land is the land of Allah and the people are the people of Allah; so whoever vitalised a dead land, then it is his" became the basis for all urban development.** This precept provided the specific development rights (*Ihya'a*) from which the urban fabric materialised. All real property regardless of the way in which it was held was subject to local control within the regional traditional Islamic environment. The laws regulating the usage of real property were exhaustive and obtained in all matters of land disputes. Negotiations were always tied to interpretations of *Shari'a*, and were always settled locally and usually in regards to precedence. Thus, dispute resolution was 'community building' and not a divisive experience causing undue turbulence within local society. How times have

changed! Adjudication of land disputes through court action serve only to antagonise those who 'lose' while simultaneously depriving those who 'win' of the good will or support of the community in which they must later live or operate.

A second important conclusion to be drawn from this study is that **all urban land development decisions, following the selection of the site for the Mosque, its Hareem (Rahba) and the Emirate's House, were popularly based.** That is, they were not mandated by a narrowly selected élite consolidated in a central authority, but made by the local populace truly reflecting the general will of society and the needs of its people. Thus, municipal decision-making was broadly based and wholly democratic in its application. The major principle was that no harm should be done upon any member of the community or the Muslim people, strengthening the role of the people as the decentralised focus for decision-making. Also, as every person was entitled to rights only over properties that they had vitalised by their own efforts, or to rights that were constantly reinforced through decisions and actions, this system automatically prevented wastage and property claims that exceeded needs, the maintenance of which would have become a burden to any individual's lifestyle. This manner of property distribution, which allocates to each person according to their unique needs and choices, is impossible to replicate under centralised arrangements as are, by definition, its advantages in terms of resource efficiency, encouragement of social consensus and individual cunning, and its ability to sustain and manifest a set of flexible cultural principles.

In the Islamic City there was no separation of the individual from the society in which he lived. Equity regarding the individual rights of the city's inhabitants was concept well understood by the populace. A person could demarcate his tillable land, extend his house, engage in a craft, or secure a water source through his own initiative without 'intermediary help' because through membership alone he was a direct and equal part of local government. Personal empowerment was part and parcel of life within Islamic society.

Thirdly, one can conclude that famous historic city plans such as the circular one attributed to the medieval city of Baghdad were not 'city' plans, but rather mere parts of plans. Research indicates that at the time the plan was effected, the population of Baghdad was far too great to be accommodated within the circular walls delimiting the city. A close investigation of demographic material (or documents that can serve as surrogates for population estimates) reveals that Baghdad was a substantial city when it served as the Caliphate of the Islamic World. Thus, the 'plan' that has been proffered in the literature of city planning was more of a scheme for organising the citadel than a comprehensive document for establishing the overall

settlement pattern of the grater urban community. From the vast number of Mosques, latrines, bathhouses, and other items of critical infrastructure recorded, it is apparent that the circular plan with its primary entrances located on cardinal points was directed more to the spatial needs of government (palace, Friday Mosque, and administration) rather than to the general welfare of the populace. Lewis Mumford, among others, has noted that the development of the citadel as a first stage of urban development has been a consistent building theme throughout the entire history of civilisation. Therefore, the formalised plan with strong axial emphasis that has been attributed to be the city has given a false façade to Islamic urban planning and development.

An important fourth point to be noted in the research is that the pattern of roads that the passer-by might note in his exploration of the Islamic City is not just a jumble of paths and access ways, but an organised system (*Al-Finaa*, *Al-Tareeqh Al-Maytaa*, *Al-Hareem*, *Al-Irtifaqh*, *Al-Leena*, *Al-Shofa'a*, etc.) of easements, courts and finely-tuned routes that were established through local juridical decisions based upon Islamic concerns for privacy, utility and personal needs. Thus, the small-scale land use configuration of building additions, shops and services did not result from uncontrolled growth, but from well thoughtout neighbourhood development decisions.

Broadly based Islamic 'planning' recognised and addressed the hierarchical importance of space as it related to both dwellings and surrounding areas. Therefore, the informal system of socio-physical planning reflected a very high standard of concern for personal right and individual family welfare.

Unfortunately, this major point has received precious little attention in either planning or architectural literature leading to gross misunderstandings of the cultural continuity of the Islamic City. So what can we say of the cities that we see in the Islamic World today? Are we viewing an architecture intrinsic to Muslim society, or are we simply suffering the application of design clichés which conceals the vibrant city that lies beneath? This research has indicated that an architecture could develop through societal changes that would allow for more personal expression in matters of neighbourhood planning and design. It is the ease of interaction of people with their buildings that constitutes the basis of good design. Incorporating well tested design principles that could serve good purpose in buildings today might generate a much more human and suitable environment than one that experiments with transplanted and/or unrelated building forms.

A fifth important conclusion that should be mentioned that problems, disputes and trade-offs between public needs that at times infringed upon individual rights were always adjudicated on the bases of *no Darar no Dirar*. Thus any potential turbulence within urban society was reduced or removed through applying the principle that neither the public nor an individual should be harmed by any municipal or private action. While this point builds quite directly upon the first one mentioned, it goes much further in bringing to light the profound fairness required of urban inhabitants that is imbedded in the practice of Islam. What harms or could potentially harm an individual or member of his family truly matters in the urban community. And, the redress of such matters is a spiritual concern as well as physical or psychological one. It is perhaps the loss of this basic principle of community living that has deprived *Al-Amer* of its greatest significance.

Finally, this thesis has shown that Islamic Law has evolved through the needs and the values of communities. It has been used to shape traditional architecture over many centuries and this architecture stands as a testament to these needs and values. The text throughout acknowledges the importance attached to Islamic doctrines of decentralisation, flexibility, participation, negotiation, rights, partnerships between civil society, governance and private sectors individuals and business – all of which are key themes today in urban development and urban management. Questions of how one can encourage people's participation in urban developments, how planning can become truly democratic and how communities can sustain their ways of life are all answered in these pages. The historical emphasis throughout the text underplays the currency of many of these principles which today might be the basis to a new language of city planning in cities of today, and this is the modernity of Islamic law.

In a similar way, the text emphasises (at most times implicitly) the importance of combining ideology with pragmatism and planning, which together offer an effective means of managing the built environment in the context of shared values and ideas. It is this balance which today is at risk.

The author believes that similar mechanisms of transforming the values and norms among communities in other cultures or countries do exist. The thesis therefore presents a universal research methodology to explore the principles of formation of cities and places in different contexts. These terms all represent values that are increasingly central to the objectives and intentions of urbanisation development throughout the world. Ownership is the bond that unites these many themes together and creates the social patterns that the architecture of *Al-Amer* manifests.

APPENDICES A

Glossary of the Thesis

This glossary is a brief explanation for the Arabic terminology found within the thesis. Every word is related to the where it was first utilised. The Arabic word may have more than a single meaning. Thus, it may reflect different meanings covering different aspects of the term as it is mentioned in different places of the text.

ﷲ	Almighty greatness and loftiness.
ﷺ	Peace be upon him.
ﷻ	May Allah satisfy on him.
<i>Abya'at</i>	Houses.
<i>Ahzab</i>	The tribes of the Arab peninsula gathered in 5 / 625 to attack Al-Madinah Al-Munawarah.
<i>Ain</i>	The property.
<i>Amela</i>	Village.
<i>Amer</i>	The residential areas of the Islamic City.
<i>Amsar</i>	Military Cities.
<i>Ansar</i>	The companions of the Prophet ﷺ from Al-Madinah Al-Munawarah.
<i>Aqahr Khadem</i>	Servant property.
<i>Aqahr Makhdoom</i>	Served property.
<i>Ara</i>	The grazing grounds.
<i>Arbitta</i>	Buildings on borders for defence and guarding.
<i>Areyah</i>	A type of loan.
<i>Aspaqiya</i>	Prioritisation to places (i.e. to market places, Mosques' places etc.
<i>Aswaqh</i>	markets.
<i>Aswaqh</i>	Markets.
<i>Atam</i>	A fortified construction of clay and stones in the form of a tower with some holes for defensive purposes.
<i>Attiya</i>	Gifts and Presents.
<i>Austowan</i>	Interior and entrance of the house.
<i>Bade</i>	
<i>Balad / Bilad</i>	city / cities.
<i>Barriya</i>	Straw mats.

<i>Bastas</i>	places for people who came first from the sellers at the market (plural <i>Bastaat</i>).
<i>Baten Al Tareeqh</i>	The road itself and the property walls which form its lower level sides.
<i>Bayet</i>	Room in the ground floor.
<i>Baytull Mall</i>	Public Treasury.
<i>Bazaar</i>	A shop in covered markets (plural <i>Basaraat</i>).
<i>Bedouin</i>	A desert dweller.
<i>Cubit</i>	A measurement unit equal to 50 cm.
<i>Daheya</i>	Suburb which is located away from the city and its dwellings.
<i>Darar</i>	Harm to ones neighbour in the pursuit of some benefit of doer.
<i>Darb, Hara</i>	Cul-de-sac.
<i>Day'aa</i>	Hamlet.
<i>Dekka</i>	An immovable seat.
	Desert.
<i>Dirar</i>	Harm to ones neighbour without any benefit to the doer.
<i>Divan</i>	The council and the public registry office.
<i>Eid</i>	Feast.
<i>Emirate house</i>	The house of the leader or the prince.
<i>Etraa</i>	A stick similar to the short spear.
<i>Faqih</i>	The jurist.
<i>Faradi</i>	An officer who could be found in the local Mosque (with the judge) to illustrate rules of legislation to resolve disputes.
<i>Fardah</i>	Port city.
<i>Faseel</i>	area zone for protection.
<i>Fay'e</i>	Lands gained without being won by <i>Jihad</i> (fighting).
<i>Feddan</i>	A piece of land has an area of 2400 m ² .
<i>Finaa</i>	Outer courtyards / forecourts of houses.
<i>Fiqh</i>	The laws governing daily life and an interpretation of <i>Quran</i> and <i>Sumna</i> .
<i>Ghana'em</i>	Booties, These are the property for <i>Mojahedeen</i> (soldiers) before distribution as they share their ownership. These properties are not allowed to be allocated to any individuals to the detriment of others (Ibn Abdeen, 1979, vol.4, p.159).
<i>Ghorfa</i>	Room built on a higher level.
<i>Ghouta</i>	Oasis, a special term relating to the outskirts of Damascus (Sham).
<i>Gizya'a</i>	Money taken from non-Muslims and put in the Public Treasury for their protection and defendce against their enemies
<i>Gorof</i>	The northern cliff of Al Madinah Al Munawarah.

<i>Haddiya</i>	Gifts and Presents. These revenues come from properties of people and their lands which are frequently neglected or when they could not reclaim it (Abu Youssof, 1979, pp.62-67).
<i>Haderah</i>	The civilised place. Linguistically, <i>Hadar</i> means the one living in the cities, as opposed to Bedouin, the desert dweller. <i>Hadar</i> also means any person who descends on a water spring and does not leave it in summer or winter.
<i>Hadith</i>	The sayings of the Prophet Mohammed ﷺ.
<i>Haqh Al-Ikhtisas</i>	The right of ownership of enjoyment with utility without possession of neither the property nor the utility.
<i>Haqh Al-Istighlal</i>	The right of exploitation.
<i>Haqh Al-Istima'al</i>	The right of use.
<i>Haqh Al-Tareeqh</i>	Rules and rights of the street.
<i>Haqh Al-Tassaruf</i>	Right of disposition.
<i>Haqh</i>	The right.
<i>Hareem</i>	<i>Hareem</i> covers whatever is necessary to vitalise land. This includes all facilities required for land's vitalisation at the time the process begins.
<i>Haush</i>	The internal courtyard inside the house.
<i>Haush</i>	The internal courtyard of the traditional house.
<i>Hawzah</i>	County.
<i>Heelah</i>	Stratagem.
<i>Heelah</i>	Strategy.
<i>Hemaa</i>	This is the allocation of a part of dead land not owned by anyone for public benefit. <i>Hemaa</i> transfers the individual right to vitalise and own to public ownership, so people may not do this individually. It remains mortmain for Muslim's benefit.
<i>Hiba</i>	Type of grant.
<i>Hijrah</i>	Literally Immigration; The trip from Makkah to Al-Madinah which the Prophet ﷺ made and which was later accepted to be the starting date of the calendar for the Muslims.
<i>Hissba</i>	Principle of enjoining what is right, forbidding what is wrong and reconciling among people.
<i>Hiyazat Al-Darar</i>	Harm possession.
<i>Ihtiyal</i>	Stratagem.
<i>Ihya'a</i>	The vitalisation of waste land.
<i>Ijara</i>	Lease, which means in <i>Shari'a</i> law the sale of utility for a fixed period.

<i>Ikhtisas</i>	This term includes matters relating to rules of common walls, easement of roads and the right to water running through other properties.
<i>Imam</i>	The Caliph or the ruler.
<i>Intifa'a</i>	The enjoyment right.
<i>Iqta'a Irtifaqh</i>	Easement grants.
<i>Iqta'a Istighlal</i>	Utilisation grants.
<i>Iqta'a Tamleek</i>	Ownership grants for lands by the <i>Imam</i> .
<i>Iqta'a</i>	The granting or allocation of land areas. Granted lands refer to land that the <i>Imam</i> (Governor) grants to a citizen for constructing or planting.
<i>Irtifaqh</i>	Enjoyment of property.
<i>Irtifaqh</i>	Easement.
<i>Irtifaqh</i>	Easement right. It is the due right on a servient property for the utility of another dominant real property, by which the owner of the servient property can enjoy the necessities of drinking water, access etc. It is a right stipulated by <i>Shari'a</i> that the owner should allow the usufructuary to pass through and must be compelled to do so because easement is a right determined by <i>Shari'a</i> , whether the need for easement is new or was established in advance by <i>Ihya'a</i> or division.
<i>Istitraqh</i>	This is a person's use of another's possession to access or maintain his own property
<i>Jahiliya</i>	Times before Islam.
<i>Jami</i>	Mosque.
<i>Jewar</i>	Right of neighborhood.
<i>Jewar</i>	The adjoining neighbours.
<i>Jihad</i>	Fighting for the sac of Allah.
<i>Joma'a Mosque</i>	The Friday Mosque.
<i>Kaghid</i>	Grain.
<i>Kashef Al Darar</i>	Revealing the Harm.
<i>Khan</i>	Built and covered shops (plural <i>khanaat</i>).
<i>Kharaj</i>	A certain amount of money paid for the Muslims treasury.
<i>Khitta'at</i>	Settlement areas demarcated and fenced by, for example, walls, stones or other system of delimitation, <i>Al Khitta'a</i> could include some unbuilt areas within its boundaries.
<i>Khososiya</i>	Privacy.
<i>Leena</i>	Flexibility and tolerance between individual ownerships (roads, forecourts and <i>Finaa</i> etc.).

<i>Loqata</i>	Neglected things.
<i>Madarah</i>	Village.
<i>Madinah Munawarah</i>	The Prophet's ﷺ city and the first city in Islam, previously called <i>Yathrib</i> .
<i>Madinah</i>	City, it is the place of authority, law and judgement.
<i>Madrasa</i>	School.
<i>Mafsada</i>	Mischief and blight.
<i>Mahelat</i>	The place in which the people settle.
<i>Majel</i>	The place used for collecting rain water and mostly owned by one house.
<i>Majraa</i>	A person's right to run flowing water (i.e. drinking and irrigating water) through another's property for his own use.
<i>Manar</i>	Signs and/or borders of land.
<i>Manasei</i>	Places for latrines.
<i>Manfa'a</i>	The utility right.
<i>Maqaed Al-Aswaqh</i>	Market seats.
<i>Marbad</i>	Camels Market.
<i>Masaa</i>	A place between two mountains (<i>Al-Safa and Al-Marrwa</i>) in which pilgrims walk.
<i>Maseel</i>	The right to drain excessive water through others' possession
<i>Maslaha</i>	Benefit.
<i>Mastaba</i>	Fixed or movable tables used for sitting or selling.
<i>Mataaf</i>	The circular area around the <i>Kaaba</i> .
<i>Mawaat</i>	Dead land.
<i>Maz'hab</i>	The five distinct schools of outlining and administering doctrine, which represent different regions of the world, These five doctrines are: the Hanafiya, the Malikiya, the Shafi'iyah, the Hanbaliya and the Shi'ite doctrine.
<i>Milkiya Ibaqah</i>	Ownership by retention and inheritance.
<i>Milkiya Ithbat</i>	Ownership by establishment and seizing.
<i>Milkiya Kamila</i>	Complete ownership.
<i>Milkiya Kamila</i>	Complete ownership.
<i>Milkiya Naqisa</i>	Incomplete ownership.
<i>Milkiya Naqisa</i>	Incomplete ownership.
<i>Milkiya Naql</i>	Ownership by assignment.
<i>Milkiya</i>	Ownership.
<i>Milkiyat Al-Manfa'a</i>	Any right that is not confined to a certain period, nor does it belong to the ownership of the property.
<i>Milkiyat Al-Naql</i>	Ownership by assigning after seizing.

<i>Milkiyat Al-Tabaqaat</i>	Ownerships of airspace.
<i>Misr</i> , pl. <i>Amsa'ar</i>	Means the border and <i>Misr</i> of the <i>Dar</i> means its borders.
<i>Mizab</i>	Waterspout.
<i>Mohdath</i>	New.
<i>Moroor</i>	Right of passing through.
<i>Mudar</i>	Clay construction.
<i>Mudari</i>	One who comes from the city.
<i>Mufti</i>	Jurist.
<i>Muhajireen</i>	Immigrants.
<i>Muhtassib</i>	The one appointed by a Muslim ruler to enjoin what is right and to forbid what is wrong in markets and streets.
<i>Nabisha</i>	Is the space left in the banks of a well or river for loads carried by animals coming to drink. It is 40, 50, 300 or 500 Arm length (20, 25, 150, or 250m), due to the diversification function of the water source and its surroundings of objects and facilities.
<i>Nadeh</i>	Animals bringing water.
<i>Noria</i>	Waterwheel.
<i>Omra</i>	A sort of grant or gift.
<i>Qadeem</i>	Old.
<i>Qarya</i> , pl. <i>Qourah</i>	Village, and is the collective of <i>Misr</i> .
<i>Qaser</i>	Palace.
<i>Qassaba</i>	Borough, city centre, or place of movement, meeting and exchange.
<i>Qata'ie</i>	Granted lands.
<i>Quran</i>	The Holy book of the Muslims.
<i>Rabad</i>	It indicates three things. The first is that the area and buildings lie outside the city or are attached to the city wall from the outside. The second meaning of <i>Rabad</i> refers to the <i>Hareem</i> of the Mosque, which is the open yard in front of the Mosque and the third refers to outskirts (Ibn Manzoor, 1965, pp.1107, 1108).
<i>Rahawa</i>	Place owned collectively between groups of houses where the water of rain gathers and collects, as opposed to the water of <i>Al-Majel</i> , which is individually owned.
<i>Rahba</i>	Any yard in front of a building.
<i>Raqaba</i>	The land property.
<i>Rawadef</i>	The people who come to the city of Koufa to establish permanent resonancy.
<i>Rawkaa</i>	Space at the rear of a house that is available for pedestrians.

<i>Reef</i>	countryside.
<i>Ribat</i>	Frontiers cities.
<i>Rikaz</i>	A specific amount of money given to the Public Treasury. It represents one-fifth of plunder / spoils, minerals and treasures buried in the earth.
<i>Roshan</i>	An extended window to the street, bay window, plural <i>Rawashen</i> .
<i>Ruqba</i>	A type of gifts.
<i>Rustaqu</i>	Small towns and/or villages.
<i>Sabaat</i> , pl. <i>Sabataat</i>	An overhang built over the road and connecting two houses or more.
<i>Sabeel</i>	Drinking fountain.
<i>Sadaqh</i>	Charity.
<i>Saha</i> , pl. <i>Sahat</i>	Means open area, squares.
<i>Sahen</i>	The internal courtyard of the Mosque or the house.
<i>Sakifa</i>	Pl. <i>Saka'if</i> , roofed places , sheds and roofed entrances.
<i>Sareer</i>	Raised sitting platform.
<i>Sawafi</i>	Lands selected by the governor for the public treasury, originally came from the land revenue generated by invading other countries or from the belongings of a man who escaped or was killed in war.
<i>Seba</i>	The Northern wind.
<i>Shafa</i>	The right to water as established for every human being, not confined to a certain person, for their drinking and their animals or burden providing it does not cause any harm.
<i>Shareh Al-Azam</i>	The main public road.
<i>Shareh</i>	Pl. <i>Shawareh</i> , Street (s).
<i>Shari'a</i>	the Divine Law of Islam.
<i>Sharika</i>	Partners in possession.
<i>Sharikat Al-Masha'a</i>	The common partnership.
<i>Sheikhs</i>	Scholars.
<i>Shiper</i>	An Arabian measurement equals 25 cm.
<i>Shofa'a Al-Jewar</i>	Preemption by neighbouring.
<i>Shofa'a Al-Khaleet</i>	Preemption by being partners in rights of Al Irtifaqh.
<i>Shofa'a Al-Sharika</i>	Preemption by partnership
<i>Shofa'a</i>	Preemption.
<i>Shorb</i>	Jurists use the term right of <i>Al Shorb</i> to indicate share of water, or time of drinking, or irrigation of plants and trees. This right of drinking includes the right of <i>Al Shafa</i> (animals' drinking rights), which also deals with those that are burdened.
<i>Souqh</i> , pl. <i>Aswaqh</i>	Market (s).

<i>Sunna</i>	Traditions of the Prophet Muhammad ﷺ.
<i>Sutra</i>	Screen.
<i>Ta'addi</i>	Illegal action harming others.
<i>Ta'ali</i>	The right of building higher floors.
<i>Ta'assuf</i>	Aggressiveness in using the legal right.
<i>Ta'ssaruf</i>	Disposition.
<i>Tahayul</i>	Stratagem.
<i>Tahjeer</i>	Petrification. This implies fixing signs on the dead or granted land with a view to its vitalisation. This is done by putting any kind of signs or marks like stones, bricks, wood, walls, dust, reeds etc. around it to show its limits.
<i>Tamleek Al-Intifa'a</i>	This is similar to that the right of the market seats in that it is attached entirely to a property and is renewed regularly and can be claimed by whoever arrives earliest.
<i>Tamleek Al-Manfa'a</i>	Possession of the utility.
<i>Tamleek Al-Manfa'a</i>	Absolute possession of the utility for only a certain time as handled by a contract of lease.
<i>Tankeeb</i>	An act done to prevent <i>Darar</i> of the neighbour by removing the door or window from its place to another place.
<i>Tareeqh Al Maytaa</i>	Any road in <i>Al-Amer</i> (traditional residential areas) including its feeders. It is heavily walked in and leads to all places in the city. It also includes the courtyards outside and between the buildings.
<i>Tareeqh Al-Muslimeen</i>	Public road.
<i>Tareeqh Gha'er Nafiz</i>	Private road, Cul-de-sac.
<i>Tareeqh</i> , pl. <i>Toroqh</i>	Street (s).
<i>Tashreeba</i>	A roof projected over the internal courtyard.
<i>Urf Kashef Al Darar</i>	Custom of revealing the harm.
<i>Urf</i>	Custom.
<i>Uzer</i>	The excuse.
<i>Waqf</i>	Mortmain: This refers to the dedication of lands, houses, shops, schools etc. for Muslim's benefit. Many jurists consider mortmain as an aspect of public ownership since <i>Waqf</i> utility is paid to a certain group of the nation.
<i>Wasiyah</i>	The will.
<i>Yathrib</i>	The Prophet's ﷺ city and the first city in Islam, which later on called <i>Al-Madinah Al-Munawarah</i> .
<i>Za'an</i>	Departure.

<i>Zaher Al Tareeqh</i>	The property walls which form its upper level sides.
<i>Zakat</i>	Alms giving: a specific amount of funds / money taken out annually from the wealth of any Muslim when the amount of this wealth / money reaches a standard level known in <i>Shari'a</i> (i.e. 2.5% of the money) and put in the Public Treasury / <i>Baytull Mall</i> .

APPENDICES B

The Islamic Calendar

The Islamic calendar, like many other calendars, is based on the lunar cycle, which is about 29 1/2 days long. This means that the Islamic calendar is about 11 days shorter than the solar calendar, which is based on the Earth's orbit around the Sun. As a result, the Islamic calendar is constantly drifting out of phase with the solar calendar, and the months of the Islamic calendar are constantly changing their position relative to the seasons. This is why the Islamic calendar is often referred to as a "lunar" calendar, and why it is often used for religious purposes, such as determining the dates of the Hajj and the Ramadan fast.

The Islamic calendar is also known as the "Hijri" calendar, after the Prophet Muhammad, who is believed to have been born in the month of Rabi' al-Thani in the year 570 CE. The Islamic calendar is divided into 12 months, each of which is named after a month of the year in which the Prophet Muhammad was born. The months of the Islamic calendar are: Muharram, Safar, Rabi' al-Thani, Rabi' al-Awwal, Jumada al-Thani, Jumada al-Awwal, Rajab, Sha'ban, Ramadan, Shawwal, Dhu al-Hijja, and Dhu al-Qadha.

In order to calculate the date of the Islamic calendar, it is necessary to know the date of the birth of the Prophet Muhammad. This date is believed to be 12 Rabi' al-Thani, 570 CE. By knowing this date, it is possible to calculate the date of any other day in the Islamic calendar, and to determine the number of months that have passed since the birth of the Prophet Muhammad.

1-Muharram	1-Rabi' al-Thani	1-Dhu al-Hijja
2-Safar	2-Rabi' al-Awwal	2-Dhu al-Qadha
3-Rabi' al-Thani	3-Rajab	3-Dhu al-Hijja
4-Rabi' al-Awwal	4-Sha'ban	4-Dhu al-Qadha

In order to calculate the date of the Islamic calendar, it is necessary to know the date of the birth of the Prophet Muhammad. This date is believed to be 12 Rabi' al-Thani, 570 CE. By knowing this date, it is possible to calculate the date of any other day in the Islamic calendar, and to determine the number of months that have passed since the birth of the Prophet Muhammad.

APPENDICES B

The Islamic Calendar

The Islamic calendar, like many other calendars, is based on a lunar year of approximately 354 days, or about 11 days less than a solar year. In order to keep the lunar months in alignment with the major seasons, most users of a lunar calendar interpolate an extra or thirteenth month. The Muslim calendar has no extra month as a Quranic revelation (Surat Al-Tawba, verse 36) fixed the calendar year at twelve lunar months. The net result is that knowing the Muslim month and year in which an event took place does not indicate the corresponding season or specific month in the Gregorian Christian solar calendar. The only easy way to calculate the Christian equivalent for a Muslim date is to use a table such as the one that follows.

The Calipha Omar established the first year of the Muslim calendar as the year in which Mohammed ﷺ left Mecca for Madinah. This departure or Hijrah became the name for the Muslim calendar (A. H. = Anno Hejirae) and 1/1/1 Hijrah was calculated as 14 July 622.

In order to calculate the approximate Christian date for a Muslim date, locate the Christian date for the first day of that Muslim year from the accompanying table and then add the appropriate number of month based upon:

1-Muharram	5-Jumada I ula	9-Ramadan
2-Safar	6-Jumada I akhira	10-Shawwal
3-Rabi al awal	7-Rajab	11-Dhul Ouida
4-Rabi al thani	8-Shaban	12-Dhul Hijja

In order to calculate the exact Christian day for a Muslim day, more elaborate tables than the one in this appendices must be used. The work by G.S.p. Freeman-Grenville, *The Muslim and Christian Calendars* (London: Oxford University Press, 1963), is available, has clear instructions and can be used for such purposes. A more detailed work which included other calendars, including the special Ottoman financial calendar, is E. Mahler, *Wustenfeld-Mahlersche Vergleichungs- Tabellen der Mohammedainschen and christlichen Zeitrechnung* (Leipzig, 1926; 3rd Ed" Wiesbaden, 1961).

The best source for transforming the various calendars used by the Ottomans into Gregorian dates is Faik Resit Unat, *Hicri Tarihleri Milad Tarihe Cevirme Kilavuzu*, 3rd Ed. (Ankara, Turkey: Turk Tarih Kurumu basimlivi, 1959).

A general survey of the types of calendars found in the Islamic world is H, Taqizadeh, "*Various Eras and Calendars Used in the Countries of Islam:*" BSOAS, Vol. IX 91937-39), pp. 902-999; Vol. X (1940-42), pp. 107-132, The most comprehensive list of tables of the numerous pre-Ottoman Medieval calendars is found in V. Grummel, *La Chronologie (Traite d'etudes byzantines)*, Vol, 1 ed. P, Lemerle (Paris, 1958) .Among the calendars found in this work are Julian, Armenian, Coptic, Sassanian, Mongolian and Muslim calendars, plus data on comets, eclipses, earthquakes, etc. to 1453.

HEGIRA YEAR	DAY/MO.	GREGORIAN YEAR	HEGIRA YEAR	DAY/MO.	GREGORIAN YEAR	HEGIRA YEAR	DAY/MO.	GREGORIAN YEAR	HEGIRA YEAR	DAY/MO.	GREGORIAN YEAR
1	16 July	622	81	26 Feb.	700	161	9 Oct.	777	241	22 May	855
2	5 July	623	82	15 Feb.	701	162	28 Sept.	778	242	10 May	856
3	24 June	624	83	4 Feb.	702	163	17 Sept.	779	243	30 Apr.	857
4	13 June	625	84	24 Jan.	703	164	6 Sept.	780	244	19 Apr.	858
5	2 June	626	85	14 Jan.	704	165	26 Aug.	781	245	8 Apr.	859
6	23 May	627	86	2 Jan.	705	166	15 Aug.	782	246	28 Mar.	860
7	11 May	628	87	23 Dec.	705	167	5 Aug.	783	247	17 Mar.	861
8	1 May	629	88	12 Dec.	706	168	24 July	784	248	7 Mar.	862
9	20 Apr.	630	89	1 Dec.	707	169	14 July	785	249	24 Feb.	863
10	9 Apr.	631	90	20 Nov.	708	170	3 July	786	250	13 Feb.	864
11	29 Mar.	632	91	9 Nov.	709	171	22 June	787	251	2 Feb.	865
12	18 Mar.	633	92	29 Oct.	710	172	11 June	788	252	22 Jan.	866
13	7 Mar.	634	93	19 Oct.	711	173	31 May	789	253	11 Jan.	867
14	25 Feb.	635	94	7 Oct.	712	174	20 May	790	254	1 Jan.	868
15	14 Feb.	636	95	26 Sept.	713	175	10 May	791	255	20 Dec.	868
16	2 Feb.	637	96	16 Sept.	714	176	28 Apr.	792	256	9 Dec.	869
17	23 Jan.	638	97	5 Sept.	715	177	18 Apr.	793	257	29 Nov.	870
18	12 Jan.	639	98	25 Aug.	716	178	7 Apr.	794	258	18 Nov.	871
19	2 Jan.	640	99	14 Aug.	717	179	27 Apr.	795	259	7 Nov.	872
20	21 Dec.	640	100	3 Aug.	718	180	16 Mar.	796	260	27 Oct.	873
21	10 Dec.	641	101	24 July	719	181	5 Mar.	797	261	16 Oct.	874
22	30 Nov.	642	102	12 July	720	182	22 Feb.	798	262	6 Oct.	875
23	19 Nov.	643	103	1 July	721	183	12 Feb.	799	263	24 Sept.	876
24	7 Nov.	644	104	21 June	722	184	1 Feb.	800	264	13 Sept.	877
25	28 Oct.	645	105	10 June	723	185	20 Jan.	801	265	3 Sept.	878
26	17 Oct.	646	106	29 May	724	186	10 Jan.	802	266	23 Aug.	879
27	7 Oct.	647	107	19 May	725	187	30 Dec.	802	267	12 Aug.	880
28	25 Sept.	648	108	8 May	726	188	20 Dec.	803	268	1 Aug.	881
29	14 Sept.	649	109	28 Apr.	727	189	8 Dec.	804	269	21 July	882
30	4 Sept.	650	110	16 Apr.	728	190	27 Nov.	805	270	11 July	883
31	24 Aug.	651	111	5 Apr.	729	191	17 Nov.	806	271	29 June	884
32	12 Aug.	652	112	26 Mar.	730	192	6 Nov.	807	272	18 June	885
33	2 Aug.	653	113	15 Mar.	731	193	25 Oct.	808	273	8 June	886
34	22 July	654	114	3 Mar.	732	194	15 Oct.	809	274	28 May	887
35	11 July	655	115	21 Feb.	733	195	4 Oct.	810	275	16 May	888
36	30 June	656	116	10 Feb.	734	196	23 Sept.	811	276	6 May	889
37	19 June	657	117	31 Jan.	735	197	12 Sept.	812	277	25 Apr.	890
38	9 June	658	118	20 Jan.	736	198	1 Sept.	813	278	15 Apr.	891
39	29 May	659	119	8 Jan.	737	199	22 Aug.	814	279	3 Apr.	892
40	17 May	660	120	29 Dec.	737	200	11 Aug.	815	280	23 Mar.	893
41	7 May	661	121	18 Dec.	738	201	30 July	816	281	13 Mar.	894
42	26 Apr.	662	122	7 Dec.	739	202	20 July	817	282	2 Mar.	895
43	15 Apr.	663	123	26 Nov.	740	203	9 July	817	283	19 Feb.	896
44	4 Apr.	664	124	15 Nov.	741	204	28 June	819	284	8 Feb.	897
45	24 Mar.	665	125	4 Nov.	742	205	17 June	820	285	28 Jan.	898
46	13 Mar.	666	126	25 Oct.	743	206	6 June	821	286	17 Jan.	899
47	3 Mar.	667	127	13 Oct.	744	207	27 May	822	287	7 Jan	900
48	20 Feb.	668	128	3 Oct.	745	208	16 May	823	288	26 Dec.	900
49	9 Feb.	669	129	22 Sept.	746	209	4 May	824	289	16 Dec.	901
50	29 Jan.	670	130	11 Sept.	747	210	24 Apr.	825	290	5 Dec.	902
51	18 Jan.	671	131	31 Aug.	748	211	13 Apr.	826	291	24 Nov.	903
52	8 Jan.	672	132	20 Aug.	749	212	2 Apr.	827	292	13 Nov.	904
53	27 Dec.	672	133	9 Aug.	750	213	22 Mar.	828	293	2 Nov.	905
54	16 Dec.	673	134	30 July	751	214	11 Mar.	829	294	22 Oct.	906
55	6 Dec.	674	135	18 July	752	215	25 Feb.	830	295	12 Oct.	907
56	25 Nov.	675	136	7 July	753	216	18 Feb.	831	296	30 Sept.	908
57	14 Nov.	676	137	27 June	754	217	7 Feb.	832	297	20 Sept.	909
58	3 Nov.	677	138	16 June	755	218	27 Jan.	833	298	9 Sept.	910
59	23 Oct.	678	139	5 June	756	219	16 Jan.	834	299	29 Aug.	911
60	13 Oct.	679	140	25 May	757	220	5 Jan.	835	300	18 Aug.	912
61	1 Oct.	680	141	14 May	758	221	26 Dec.	835	301	7 Aug.	913
62	20 Sept.	681	142	4 May	759	222	14 Dec.	836	302	27 July	914
63	10 Sept.	682	143	22 Apr.	760	223	3 Dec.	837	303	17 July	915
64	30 Aug.	683	144	11 Apr.	761	224	23 Nov.	838	304	5 July	916
65	18 Aug.	684	145	1 Apr.	762	225	12 Nov.	839	305	24 June	917
66	8 Aug.	685	146	21 Mar.	763	226	31 Oct.	840	306	14 June	918
67	28 July	686	147	10 Mar.	764	227	21 Oct.	841	307	3 June	919
68	18 July	687	148	27 Feb.	765	228	10 Oct.	842	308	23 May	920
69	6 July	688	149	16 Feb.	766	229	30 Sept.	843	309	12 May	921
70	25 June	689	150	6 Feb.	767	230	18 Sept.	844	310	1 May	922
71	15 June	690	151	26 Jan.	768	231	7 Sept.	845	311	21 Apr.	923
72	4 June	691	152	14 Jan.	769	232	28 Aug.	846	312	9 Apr.	924
73	23 May	692	153	4 Jan.	770	233	17 Aug.	847	313	29 Mar.	925
74	13 May	693	154	24 Dec.	770	234	5 Aug.	848	314	19 Mar.	926
75	2 May	694	155	13 Dec.	771	235	26 July	849	315	8 Mar.	927
76	21 Apr.	695	156	2 Dec.	772	236	15 July	850	316	25 Feb.	928
77	10 Apr.	696	157	21 Nov.	773	237	5 July	851	317	14 Feb.	929
78	30 Mar.	697	158	11 Nov.	774	238	23 June	852	318	3 Feb.	930
79	20 Mar.	698	159	31 Oct.	775	239	12 June	853	319	24 Jan.	931
80	9 Mar.	699	160	19 Oct.	776	240	2 June	854	320	13 Jan.	932

HEGIRA YEAR	DAY/MO.	GREGORIAN YEAR	HEGIRA YEAR	DAY/MO.	GREGORIAN YEAR	HEGIRA YEAR	DAY/MO.	GREGORIAN YEAR	HEGIRA YEAR	DAY/MO.	GREGORIAN YEAR
321	1 Jan.	933	401	15 Aug.	1010	481	27 Mar.	1088	561	7 Nov.	1165
322	22 Dec.	933	402	4 Aug.	1011	482	16 Mar.	1089	562	28 Oct.	1166
323	11 Dec.	934	403	23 July	1012	483	6 Mar.	1090	563	17 Oct.	1167
324	30 Nov.	935	404	13 July	1013	484	23 Feb.	1091	564	5 Oct.	1168
325	19 Nov.	936	405	3 July	1014	485	12 Feb.	1092	565	25 Sept.	1169
326	8 Nov.	937	406	21 June	1015	486	1 Feb.	1093	566	14 Sep.	1170
327	29 Oct.	938	407	10 June	1016	487	21 Jan.	1094	567	4 Sep.	1171
328	18 Oct.	939	408	30 May	1017	488	11 Jan	1095	568	23 Aug.	1172
329	6 Oct.	940	409	20 May	1018	489	31 Dec.	1095	569	12 Aug.	1173
330	26 Sept.	941	410	9 May	1019	490	19 Dec.	1096	570	2 Aug.	1174
331	15 Sept.	942	411	27 Apr.	1020	491	9 Dec.	1097	571	22 July	1175
332	4 Sept.	943	412	17 Apr.	1021	492	28 Nov.	1098	572	10 July	1176
333	24 Aug.	944	413	6 Apr.	1022	493	17 Nov.	1099	573	30 June	1177
334	13 Aug.	945	414	26 Mar.	1023	494	6 Nov.	1100	574	19 June	1178
335	2 Aug.	946	415	15 Mar.	1024	495	26 Oct.	1101	575	8 June	1179
336	23 July	947	416	4 Mar.	1025	496	15 Oct.	1102	576	28 May	1180
337	11 July	948	417	22 Feb.	1026	497	5 Oct.	1103	577	17 May	1181
338	1 July	949	418	11 Feb.	1027	498	23 Sept.	1104	578	7 May	1182
339	20 June	950	419	31 Jan.	1028	499	13 Sept.	1105	579	26 Apr.	1183
340	9 June	951	420	20 Jan.	1029	500	2 Sept.	1106	580	14 Apr.	1184
341	29 May	952	421	9 Jan.	1030	501	22 Aug.	1107	581	4 Apr.	1185
342	18 May	953	422	29 Dec.	1030	502	11 Aug.	1108	582	24 Mar.	1186
343	7 May	954	423	19 Dec.	1031	503	31 July	1109	583	13 Mar.	1187
344	27 Apr.	955	424	7 Dec.	1032	504	20 July	1110	584	2 Mar.	1188
345	15 Apr.	956	425	26 Nov.	1033	505	10 July	1111	585	19 Feb.	1189
346	4 Apr.	957	426	16 Nov.	1034	506	28 June	1112	586	8 Feb.	1190
347	25 Mar.	958	427	5 Nov.	1035	507	18 June	1113	587	29 Jan.	1191
348	14 Mar.	959	428	25 Oct.	1036	508	7 June	1114	588	18 Jan	1192
349	3 Mar.	960	429	14 Oct.	1037	509	27 May	1115	589	7 Jan.	1193
350	20 Feb.	961	430	3 Oct.	1038	510	16 May	1116	590	27 Dec.	1193
351	7 Aug.	962	431	23 Sept.	1039	511	5 May	1117	591	16 Dec.	1194
352	30 Jan.	963	432	11 Sept.	1040	512	24 Apr.	1118	592	6 Dec.	1195
353	19 Jan.	964	433	31 Aug.	1041	513	14 Apr.	1119	593	24 Nov.	1196
354	7 Jan.	965	434	21 Aug.	1042	514	2 Apr.	1120	594	13 Nov.	1197
355	28 Dec.	965	435	10 Aug.	1043	515	22 Mar.	1121	595	3 Nov.	1198
356	17 Dec.	966	436	29 July	1044	516	12 Mar.	1122	596	23 Oct.	1199
357	7 Dec.	967	437	19 July	1045	517	1 Mar.	1123	597	12 Oct.	1200
358	25 Nov.	968	438	8 July	1046	518	19 Feb.	1124	598	1 Oct.	1201
359	14 Nov.	969	439	28 June	1047	519	7 Feb.	1125	599	20 Sept.	1202
360	4 Nov.	970	440	16 June	1048	520	27 Jan.	1126	600	10 Sept.	1203
361	24 Oct.	971	441	5 June	1049	521	17 Jan.	1127	601	29 Aug.	1204
362	12 Oct.	972	442	26 May	1050	522	6 Jan	1128	602	18 Aug.	1205
363	2 Oct.	973	443	15 May	1051	523	25 Dec.	1128	603	8 Aug.	1206
364	21 Sept.	974	444	3 May	1052	524	15 Dec.	1129	604	28 July	1207
365	10 Sept.	975	445	23 Apr.	1053	525	4 Dec.	1130	605	16 July	1208
366	30 Aug.	976	446	12 Apr.	1054	526	23 Nov.	1131	606	6 July	1209
367	19 Aug.	977	447	2 Apr.	1055	527	12 Nov.	1132	607	25 June	1210
368	9 Aug.	978	448	21 Mar.	1056	528	1 Nov.	1133	608	15 June	1211
369	29 July	979	449	10 Mar.	1057	529	22 Oct.	1134	609	3 June	1212
370	17 July	980	450	28 Feb.	1058	530	11 Oct.	1135	610	23 May	1213
371	7 July	981	451	17 Feb.	1059	531	29 Oct.	1136	611	13 May	1214
372	26 June	982	452	6 Feb.	1060	532	19 Sept.	1137	612	2 May	1215
373	15 June	983	453	26 Jan.	1061	533	8 Sept.	1138	613	20 Apr.	1216
374	4 June	984	454	15 Jan.	1062	534	28 Aug.	1139	614	10 Apr.	1217
375	24 May	985	455	4 Jan.	1063	535	17 Aug.	1140	615	13 Mar.	1218
376	13 May	986	456	25 Dec.	1063	536	6 Aug.	1141	616	19 Mar.	1219
377	3 May	987	457	13 Dec.	1064	537	27 July.	1142	617	8 Mar.	1220
378	21 Apr.	988	458	3 Dec.	1065	538	16 July	1143	618	25 Feb.	1221
379	11 Apr.	989	459	22 Nov.	1066	539	4 July	1144	619	15 Feb.	1222
380	31 Mar	990	460	11 Nov.	1067	540	24 June	1145	620	4 Feb.	1223
381	20 Mar.	991	461	31 Oct.	1068	541	13 June	1146	621	24 Jan.	1224
382	9 Mar.	992	462	20 Oct.	1069	542	2 June	1147	622	13 Jan.	1225
383	26 Feb.	993	463	9 Oct.	1070	543	22 May	1148	623	2 Jan.	1226
384	15 Feb.	994	464	29 Sept.	1071	544	11 May	1149	624	22 Dec.	1226
385	5 Feb.	995	465	17 Sept.	1072	545	30 Apr.	1150	625	12 Dec.	1227
386	25 Jan.	996	466	6 Sept.	1073	546	20 Apr.	1151	626	13 Nov.	1228
387	14 Jan.	997	467	27 Aug.	1074	547	8 Apr.	1152	627	20 Nov.	1229
388	3 Jan.	998	468	16 Aug.	1075	548	27 Mar.	1153	628	9 Nov.	1230
389	23 Dec.	998	469	5 Aug.	1076	549	18 Mar.	1154	629	29 Oct.	1231
390	13 Dec.	999	470	25 July	1077	550	7 Mar.	1155	630	18 Oct.	1232
391	1 Dec.	1000	471	14 July	1078	551	25 Feb.	1156	631	7 Oct.	1233
392	20 Nov.	1001	472	4 July	1079	552	13 Feb.	1157	632	26 Sept.	1234
393	10 Nov.	1002	473	22 June	1080	553	2 Feb.	1158	633	16 Sept.	1235
394	30 Oct.	1003	474	11 June	1081	554	23 Jan.	1159	634	4 Sept.	1236
395	18 Oct.	1004	475	1 June	1082	555	12 Jan.	1160	635	24 Aug.	1237
396	8 Oct.	1005	476	21 May	1083	556	31 Dec.	1160	636	14 Aug.	1238
397	27 Sept.	1006	477	10 May	1084	557	21 Dec.	1161	637	3 Aug.	1239
398	17 Sept.	1007	478	29 Apr.	1085	558	10 Dec.	1162	638	23 July	1240
399	5 Sept.	1008	479	18 Apr.	1086	559	30 Nov.	1163	639	12 July	1241
400	25 Aug.	1009	480	8 Apr.	1087	560	18 Nov.	1164	640	1 July	1242

HEGIRA YEAR	DAY/MO.	GREGORIAN YEAR	HEGIRA YEAR	DAY/MO.	GREGORIAN YEAR	HEGIRA YEAR	DAY/MO.	GREGORIAN YEAR	HEGIRA YEAR	DAY/MO.	GREGORIAN YEAR
641	21 June	1243	721	31 Jan.	1321	801	13 Sept.	1398	881	26 Apr.	1476
642	9 June	1244	722	20 Jan.	1322	802	3 Sept.	1399	882	15 Apr.	1477
643	29 May	1245	723	10 Jan.	1323	803	22 Aug.	1400	883	4 Apr.	1478
644	19 May	1246	724	30 Dec.	1323	804	11 Aug.	1401	884	25 Mar.	1479
645	8 May	1247	725	18 Dec.	1324	805	1 Aug.	1402	885	13 Mar.	1480
646	26 Apr.	1248	726	8 Dec.	1325	806	21 July	1403	886	2 Mar.	1481
647	16 Apr.	1249	727	27 Nov.	1326	807	10 July	1404	887	20 Feb.	1482
648	5 Apr.	1250	728	17 Nov.	1327	808	29 June	1405	888	9 Feb.	1483
649	26 Mar.	1251	729	5 Nov.	1328	809	18 June	1406	889	30 Jan.	1484
650	14 Mar.	1252	730	25 Oct.	1329	810	8 June	1407	890	18 Jan.	1485
651	3 Mar.	1253	731	15 Oct.	1330	811	27 May	1708	891	7 Jan.	1486
652	21 Feb.	1254	732	4 Oct.	1331	812	16 May	1409	892	28 Dec.	1487
653	10 Feb.	1255	733	22 Sep.	1332	813	6 May	1410	893	17 Dec.	1488
654	30 Jan.	1256	734	12 Sep.	1333	814	25 Apr.	1411	894	5 Dec.	1488
655	19 Jan.	1257	735	1 Sept.	1334	815	13 Apr.	1412	895	25 Nov.	1489
656	8 Jan	1258	736	21 Aug.	1335	816	3 Apr.	1413	896	14 Nov.	1490
657	29 Dec.	1258	737	10 Aug.	1336	817	23 Mar.	1414	897	4 Nov.	1491
658	18 Dec.	1259	738	30 July	1337	818	13 Mar.	1415	898	23 Oct.	1492
659	6 Dec.	1260	739	20 July	1338	819	1 Mar.	1416	899	12 Oct.	1493
660	26 Nov.	1261	740	9 July	1339	820	18 Feb.	1417	900	2 Oct.	1494
661	15 Nov.	1262	741	27 June	1340	821	8 Feb.	1418	901	21 Sept.	1495
662	4 Nov.	1263	742	17 June	1341	822	28 Jan.	1419	902	9 Sept.	1496
663	24 Oct.	1264	743	6 June	1342	823	17 Jan.	1420	903	30 Aug.	1497
664	13 Oct.	1265	744	26 May	1343	824	6 Jan.	1421	904	19 Aug.	1498
665	2 Oct.	1266	745	15 May	1344	825	26 Dec.	1421	905	8 Aug.	1499
666	22 Sept.	1267	746	4 May	1345	826	15 Dec.	1422	906	28 July	1500
667	10 Sept.	1268	747	24 Apr.	1346	827	5 Dec.	1423	907	17 July	1501
668	31 Aug.	1269	748	13 Apr.	1347	828	23 Nov.	1424	908	7 July	1502
669	29 Aug.	1270	749	1 Apr.	1348	829	13 Nov.	1425	909	26 June	1503
670	9 Aug.	1271	750	22 Mar.	1349	830	2 Nov.	1426	910	14 June	1504
671	29 July	1272	751	11 Mar.	1350	831	22 Oct.	1427	911	4 June	1505
672	18 July	1273	752	28 Feb.	1351	832	11 Oct.	1428	912	24 May	1506
673	7 July	1274	753	18 Feb.	1352	833	30 Sept.	1429	913	13 May	1507
674	27 June	1275	754	6 Feb.	1353	834	19 Sept.	1430	914	2 May	1508
675	15 June	1276	755	26 Jan.	1354	835	9 Sept.	1431	915	21 Apr.	1509
676	4 June	1277	756	16 Jan.	1355	836	28 Aug.	1432	916	10 Apr.	1510
677	25 May	1278	757	5 Jan.	1356	837	18 Aug.	1433	917	31 Mar.	1511
678	14 May	1279	758	25 Dec.	1356	838	7 Aug.	1434	918	19 Mar.	1512
679	3 May	1280	759	15 Dec.	1357	839	27 July	1435	919	9 Mar.	1513
680	22 Apr.	1281	760	3 Dec.	1358	840	16 July	1436	920	26 Feb.	1514
681	11 Apr.	1282	761	23 Nov.	1359	841	5 July	1437	921	15 Feb.	1515
682	1 Apr.	1283	762	11 Nov.	1360	842	24 June	1438	922	5 Feb.	1516
683	20 Mar.	1284	763	31 Oct.	1361	843	14 June	1439	923	24 Jan.	1517
684	9 Mar.	1285	764	21 Oct.	1362	844	2 June	1440	924	13 Jan.	1518
685	27 Feb.	1286	765	10 Oct.	1363	845	22 May	1441	925	3 Jan.	1519
686	16 Feb.	1287	766	28 Sept.	1364	846	12 May	1442	926	23 Dec.	1519
687	6 Feb.	1288	767	18 Sept.	1365	847	1 May	1443	927	12 Dec.	1520
688	25 Jan.	1289	768	7 Sep.	1366	848	20 Apr	1444	928	1 Dec.	1521
689	14 Jan.	1290	769	28 Aug.	1367	849	9 Apr.	1445	929	20 Nov.	1522
690	4 Jan.	1291	770	16 Aug.	1368	850	29 Mar.	1446	930	10 Nov.	1523
691	24 Dec.	1291	771	5 Aug.	1369	851	19 Mar.	1447	931	29 Oct.	1524
692	12 Dec.	1292	772	26 July	1370	852	7 Mar.	1448	932	18 Oct.	1525
693	2 Dec.	1293	773	15 July	1371	853	24 Feb.	1449	933	8 Oct.	1526
694	21 Nov.	1294	774	3 July	1372	854	14 Feb.	1450	934	27 Oct.	1527
695	10 Nov.	1295	775	23 June	1373	855	3 Feb.	1451	935	15 Sept.	1528
696	30 Oct.	1296	776	12 June	1374	856	23 Jan.	1452	937	5 Sept.	1529
697	19 Oct.	1297	777	2 June	1375	857	12 Jan.	1453	937	25 Aug.	1530
698	9 Oct.	1298	778	21 May	1376	858	1 Jan.	1454	938	15 Aug.	1531
699	28 Sept.	1299	779	10 May	1377	859	22 Dec.	1454	939	3 Aug.	1532
700	16 Sept.	1300	780	30 Apr.	1378	860	11 Dec.	1455	940	23 July	1533
701	5 Sept.	1301	781	19 Apr.	1379	861	29 Nov.	1456	941	13 July	1534
702	26 Aug.	1302	782	7 Apr.	1380	862	19 Nov.	1457	942	2 July	1535
703	15 Aug.	1303	783	21 Mar.	1381	863	8 Nov.	1458	943	20 June	1536
704	4 Aug.	1304	784	17 Mar.	1382	864	28 Oct.	1459	944	10 June	1537
705	24 July	1305	785	6 Mar.	1383	865	17 Oct.	1460	945	30 May	1538
706	13 July	1306	786	24 Feb.	1384	866	6 Oct.	1461	946	19 May	1539
707	3 July	1307	787	12 Feb.	1385	867	26 Sept.	1462	947	8 May	1540
708	21 June	1308	788	2 Feb.	1386	868	15 Sept.	1463	948	27 Apr.	1541
709	11 June	1309	789	22 Jan.	1387	869	3 Sept.	1464	949	17 Apr.	1542
710	31 May	1310	790	11 Jan.	1388	870	23 Aug.	1465	950	6 Apr.	1543
711	20 May	1311	791	31 Dec.	1388	871	13 Aug.	1466	951	25 Mar.	1544
712	9 May	1312	792	20 Dec.	1389	872	2 Aug.	1467	952	15 Mar.	1545
713	28 Apr.	1313	793	9 Dec.	1390	873	22 July	1468	953	4 Mar.	1546
714	17 Apr.	1314	794	29 Nov.	1391	874	11 July	1469	954	21 Feb.	1547
715	7 Apr.	1315	795	17 Nov.	1392	875	30 June	1470	955	11 Feb.	1548
716	26 Mar.	1316	796	6 Nov.	1393	876	20 June	1471	956	30 Jan.	1549
717	16 Mar.	1317	797	27 Oct.	1394	877	8 June	1472	957	20 Jan.	1550
718	5 Mar.	1318	798	16 Oct.	1395	878	29 May	1473	958	9 Jan.	1551
719	22 Feb.	1319	799	5 Oct.	1396	879	18 May	1474	959	29 Dec.	1551
720	12 Feb.	1320	800	24 Sept.	1397	880	7 May	1475	960	18 Dec.	1552

HEGIRA YEAR	DAY/MO.	GREGORIAN YEAR	HEGIRA YEAR	DAY/MO.	GREGORIAN YEAR	HEGIRA YEAR	DAY/MO.	GREGORIAN YEAR	HEGIRA YEAR	DAY/MO.	GREGORIAN YEAR
961	7 Dec.	1553	1041	30 July	1631	1121	13 Mar.	1709	1201	24 Oct.	1786
962	26 Nov.	1554	1042	19 July	1632	1122	2 Mar.	1710	1202	13 Oct.	1787
963	16 Nov.	1555	1043	8 July	1633	1123	19 Feb.	1711	1203	2 Oct.	1788
964	4 Nov.	1556	1044	27 June	1634	1124	9 Feb.	1712	1204	21 Sept.	1789
965	24 Oct.	1557	1045	17 June	1635	1125	28 Jan.	1713	1205	10 Sept.	1790
966	14 Oct.	1558	1046	5 June	1636	1126	17 Jan.	1714	1206	31 Aug.	1791
967	3 Oct.	1559	1047	26 May	1637	1127	7 Jan.	1715	1207	19 Aug.	1792
968	22 Sept.	1560	1048	15 May	1638	1128	27 Dec.	1716	1208	9 Aug.	1793
969	11 Sept.	1561	1049	4 May	1639	1129	16 Dec.	1717	1209	29 July	1794
970	31 Aug.	1562	1050	23 Apr.	1640	1130	5 Dec.	1718	1210	18 July	1795
971	21 Aug.	1563	1051	12 Apr.	1641	1131	24 Nov.	1719	1211	7 July	1796
972	9 Aug.	1564	1052	1 Apr.	1642	1132	14 Nov.	1720	1212	26 June	1797
973	29 July	1565	1053	22 Mar.	1643	1133	2 Nov.	1721	1213	15 June	1798
974	19 July	1566	1054	10 Mar.	1644	1134	22 Oct.	1722	1214	5 June	1799
975	8 July	1567	1055	27 Feb.	1645	1135	1 Oct.	1723	1215	25 May	1800
976	26 June	1568	1056	17 Feb.	1646	1136	20 Sept.	1724	1216	14 May	1801
977	16 June	1569	1057	6 Feb.	1647	1137	9 Sept.	1725	1217	4 May	1802
978	5 June	1570	1058	27 Jan.	1648	1138	29 Aug.	1726	1218	23 Apr.	1803
979	26 May	1571	1059	15 Jan.	1649	1139	19 Aug.	1727	1219	12 Apr.	1804
980	14 May	1572	1060	4 Jan.	1650	1140	7 Aug.	1728	1220	1 Apr.	1805
981	3 May	1573	1061	25 Dec.	1651	1141	27 July	1729	1221	21 Mar.	1806
982	23 Apr.	1574	1062	14 Dec.	1652	1142	17 July	1730	1222	11 Mar.	1807
983	12 Apr.	1575	1063	2 Dec.	1653	1143	6 July	1731	1223	28 Feb.	1808
984	31 Mar.	1576	1064	22 Nov.	1654	1144	24 June	1732	1224	16 Feb.	1809
985	21 Mar.	1577	1065	11 Nov.	1655	1145	14 June	1733	1225	6 Feb.	1810
986	10 Mar.	1578	1066	31 Oct.	1656	1146	3 June	1734	1226	26 Jan.	1811
987	28 Feb.	1579	1067	20 Oct.	1657	1147	24 May	1735	1227	16 Jan.	1812
988	17 Feb.	1580	1068	9 Oct.	1658	1148	12 May	1736	1228	4 Jan.	1813
989	5 Feb.	1581	1069	29 Sept.	1659	1149	1 May	1737	1229	24 Dec.	1814
990	26 Jan.	1582	1070	18 Sept.	1660	1150	21 Apr.	1738	1230	14 Dec.	1815
991	25 Jan.	1583	1071	6 Sept.	1661	1151	10 Apr.	1739	1231	3 Dec.	1816
992	14 Jan	1584	1072	27 Aug.	1662	1152	29 Mar.	1740	1232	21 Nov.	1817
993	3 Jan.	1585	1073	16 Aug.	1663	1153	19 Mar.	1741	1233	11 Nov.	1818
994	23 Dec.	1585	1074	5 Aug.	1664	1154	8 Mar.	1742	1234	31 Oct.	1819
995	12 Dec.	1586	1075	25 July	1665	1155	25 Feb.	1743	1235	20 Oct.	1820
996	2 Dec.	1587	1076	14 July	1666	1156	15 Feb.	1744	1236	9 Oct.	1821
997	20 Nov.	1588	1077	4 July	1667	1157	3 Feb.	1745	1237	28 Sept.	1822
998	10 Nov.	1589	1078	23 June	1668	1158	24 Jan	1746	1238	18 Sept.	1823
999	30 Oct.	1590	1079	11 June	1669	1159	13 Jan.	1747	1239	7 Sept.	1824
1000	19 Oct.	1591	1080	1 June	1670	1160	2 Jan.	1748	1240	26 Aug.	1825
1001	8 Oct.	1592	1081	21 May	1671	1161	22 Dec.	1749	1241	16 Aug.	1826
1002	27 Sept.	1593	1082	10 May	1672	1162	11 Dec.	1750	1242	5 Aug.	1827
1003	16 Sept.	1594	1083	29 Apr.	1673	1163	30 Nov.	1751	1243	25 July	1828
1004	6 Sept.	1595	1084	18 Apr.	1674	1164	20 Nov.	1752	1244	14 July	1829
1005	28 Aug.	1596	1085	7 Apr.	1675	1165	8 Nov.	1753	1245	3 July	1830
1006	14 Aug.	1597	1086	28 Mar.	1676	1166	29 Oct.	1754	1246	22 June	1831
1007	4 Aug.	1598	1087	16 Mar.	1677	1167	18 Oct.	1755	1247	12 June	1832
1008	24 July	1599	1088	6 Mar.	1678	1168	7 Oct.	1756	1248	31 May	1833
1009	13 July	1600	1089	23 Feb.	1679	1169	26 Sept.	1757	1249	21 May	1834
1010	2 July	1601	1090	12 Feb	1680	1170	15 Sept.	1758	1250	10 May	1835
1011	21 June	1602	1091	2 Feb.	1681	1171	4 Sept.	1759	1251	29 Apr.	1836
1012	11 June	1603	1092	21 Jan.	1682	1172	25 Aug.	1760	1252	18 Apr.	1837
1013	30 May	1604	1093	10 Jan.	1683	1173	13 Aug.	1761	1253	7 Apr.	1838
1014	19 May	1605	1094	31 Dec.	1684	1174	2 Aug.	1762	1254	27 Mar.	1839
1015	9 May	1606	1095	20 Dec.	1685	1175	23 July	1763	1255	17 Mar.	1840
1016	28 Apr.	1607	1096	8 Dec.	1686	1176	12 July	1764	1256	5 Mar.	1841
1017	17 Apr.	1608	1097	28 Nov.	1687	1177	1 July	1765	1257	23 Feb.	1842
1018	6 Apr.	1609	1098	17 Nov.	1688	1178	20 June	1766	1258	12 Feb.	1843
1019	26 Mar.	1610	1099	7 Nov.	1689	1179	9 June	1767	1259	1 Feb.	1844
1020	16 Mar.	1611	1100	26 Oct.	1690	1180	30 May	1768	1260	22 Jan.	1845
1021	4 Mar.	1612	1101	15 Oct.	1691	1181	18 May	1769	1261	10 Jan.	1846
1022	21 Feb.	1613	1102	5 Oct.	1692	1182	7 May	1770	1262	30 Dec.	1847
1023	11 Feb.	1614	1103	24 Sept.	1693	1183	27 Apr.	1771	1263	20 Dec.	1848
1024	31 Jan.	1615	1104	12 Sept.	1694	1184	16 Apr.	1772	1264	9 Dec.	1849
1025	20 Jan.	1616	1105	2 Sept.	1695	1185	4 Apr.	1773	1265	27 Nov.	1850
1026	9 Jan	1617	1106	22 Aug.	1696	1186	25 Mar.	1774	1266	17 Nov.	1851
1027	29 Dec.	1618	1107	12 Aug.	1697	1187	14 Mar.	1775	1267	6 Nov.	1852
1028	19 Dec.	1619	1108	31 July	1698	1188	4 Mar.	1776	1268	27 Oct.	1853
1029	8 Dec.	1620	1109	20 July	1699	1189	21 Feb.	1777	1269	15 Oct.	1854
1030	26 Nov.	1621	1110	10 July	1700	1190	19 Feb.	1778	1270	4 Oct.	1855
1031	16 Nov.	1622	1111	29 June	1701	1191	30 Jan.	1779	1271	24 Sept.	1856
1032	5 Nov.	1623	1112	18 June	1702	1192	19 Jan.	1780			
1033	25 Oct.	1624	1113	8 June	1703	1193	8 Jan.	1781			
1034	14 Oct.	1625	1114	28 May	1704	1194	28 Dec.	1782			
1035	3 Oct.	1626	1115	17 May	1705	1195	17 Dec.	1783			
1036	22 Sept.	1627	1116	6 May	1706	1196	7 Dec.	1784			
1037	12 Sept.	1628	1117	25 Apr.	1707	1197	26 Nov.	1785			
1038	31 Aug.	1629	1118	15 Apr.	1708	1198	14 Nov.				
1039	21 Aug.	1630	1119	4 Apr.		1199	4 Nov.				
1040	10 Aug.		1120	23 Mar.		1200					

HEGIRA YEAR	DAY/MO.	GREGORIAN YEAR	HEGIRA YEAR	DAY/MO.	GREGORIAN YEAR	HEGIRA YEAR	DAY/MO.	GREGORIAN YEAR	HEGIRA YEAR	DAY/MO.	GREGORIAN YEAR
1272	13 Sept.	1855	1310	26 July	1892	1348	9 June	1929	1386	22 Apr.	1966
1273	1 Sept.	1856	1311	15 July	1893	1349	29 May	1830	1387	11 Apr.	1967
1274	22 Aug.	1857	1312	5 July	1894	1350	19 May	1931	1388	31 May	1968
1275	11 Aug.	1858	1313	24 June	1895	1351	7 May	1932	1389	20 Mar.	1969
1276	31 July	1859	1314	12 June	1896	1352	26 Apr.	1933	1390	9 Mar.	1970
1277	20 July	1860	1315	2 June	1897	1353	16 Apr.	1934	1391	27 Feb.	1971
1278	9 July	1861	1316	22 May	1899	1354	5 Apr.	1935	1392	16 Feb.	1972
1279	29 June	1862	1317	12 May	1899	1355	24 Mar.	1936	1393	4 Feb.	1973
1280	18 June	1863	1318	1 May	1900	1356	14 Mar.	1937	1394	25 Jan.	1974
1281	6 June	1864	1319	20 May	1901	1357	3 Mar.	1938	1395	14 Jan.	1975
1282	27 May	1865	1320	10 Apr.	1902	1358	21 Feb.	1939	1396	3 Jan.	1976
1283	16 May	1866	1321	30 Mar.	1903	1359	10 Feb.	1940	1397	23 Dec.	1976
1284	5 May	1867	1322	18 Mar.	1904	1360	29 Jan.	1941	1398	12 Dec.	1977
1285	24 Apr.	1868	1323	8 Mar.	1905	1361	19 Jan.	1942	1399	2 Dec.	1978
1286	13 Apr.	1869	1324	25 Feb.	1906	1362	8 Jan.	1943	1400	21 Nov.	1979
1287	3 Apr.	1870	1325	14 Feb.	1907	1363	28 Dec.	1943	1401	9 Nov.	1980
1288	23 Mar.	1871	1326	4 Feb.	1908	1364	17 Dec.	1944	1402	30 Oct.	1981
1289	11 Mar.	1872	1327	23 Jan.	1909	1365	6 Dec.	1945	1403	19 Oct.	1982
1290	1 Mar.	1873	1328	13 Jan.	1910	1366	25 Nov.	1946	1404	8 Oct.	1983
1291	18 Feb.	1874	1329	2 Jan.	1911	1367	15 Nov.	1947	1405	27 Sept.	1984
1292	7 Feb.	1875	1330	22 Dec.	1911	1368	3 Nov.	1948	1406	16 Sept.	1985
1293	28 Jan.	1876	1331	11 Dec.	1912	1369	24 Oct.	1949	1407	6 Sept.	1986
1294	16 Jan.	1877	1332	30 Nov.	1913	1370	13 Oct.	1950	1408	26 Aug.	1987
1295	5 Jan.	1878	1333	22 Nov.	1914	1371	2 Oct.	1951	1409	14 Aug.	1988
1296	26 Dec.	1878	1334	9 Nov.	1915	1372	21 Sept.	1952	1410	4 Aug.	1989
1297	15 Dec.	1879	1335	28 Oct.	1916	1373	10 Sept.	1953	1411	24 July	1990
1298	4 Dec.	1880	1336	17 Oct.	1917	1374	30 Aug.	1954	1412	13 July	1991
1299	23 Nov.	1881	1337	7 Oct.	1918	1375	20 Aug.	1955	1413	2 July	1992
1300	12 Nov.	1882	1338	26 Sept.	1919	1376	8 Aug.	1956	1414	21 June	1993
1301	2 Nov.	1883	1339	15 Sept.	1920	1377	29 July	1957	1415	10 June	1994
1302	21 Oct.	1884	1340	4 Sept.	1921	1378	18 July	1958	1416	31 May	1995
1303	10 Oct.	1885	1341	24 Aug.	1922	1379	7 July	1959	1417	19 May	1996
1304	30 Sept.	1886	1342	14 Aug.	1923	1380	25 June	1960	1418	9 May	1997
1305	19 Sept.	1887	1343	2 Aug.	1924	1381	14 June	1961	1419	28 Apr.	1998
1306	7 Sept.	1888	1344	22 July	1925	1382	4 June	1962	1420	17 Apr.	1999
1307	28 Aug.	1889	1345	12 July	1926	1383	25 May	1963	1421	6 Apr.	2000
1308	17 Aug.	1890	1346	1 July	1927	1384	13 May	1964			
1309	7 Aug.	1891	1347	20 June	1928	1385	2 May	1965			

APPENDICES C

APPENDICES C

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